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# SELECT COMMITTEE ON THE OMBUDSMAN

## ORGANIZATION

THURSDAY, JULY 16, 1981





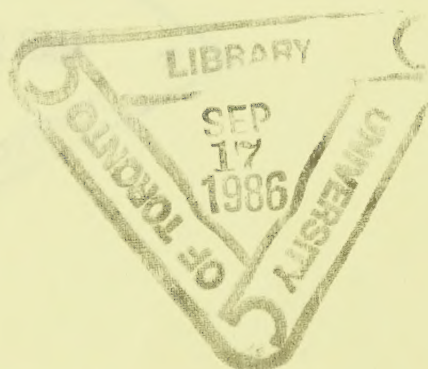
SELECT COMMITTEE ON THE OMBUDSMAN

CHAIRMAN: Runciman, R. W. (Leeds PC)  
VICE-CHAIRMAN: Miller, G. I. (Haldimand-Norfolk L)  
Andrewes, P. W. (Lincoln PC)  
Barlow, W. W. (Cambridge PC)  
Boudria, D. (Prescott-Russell L)  
Cooke, D. S. (Windsor-Riverside NDP)  
Dean, G. H. (Wentworth PC)  
Eves, E. L. (Parry Sound PC)  
Kells, M. C. (Humber PC)  
Philip, E. T. (Etobicoke NDP)  
Shymko, Y. R. (High Park-Swansea PC)  
Van Horne, R. G. (London North L)

Clerk: White, G.

From the Office of the Ombudsman:

Goodman, B., Counsel and Special Adviser to the Ombudsman





LEGISLATURE OF ONTARIO

SELECT COMMITTEE ON THE OMBUDSMAN

Thursday, July 16, 1981

The committee met at 10:16 a.m. in room No. 151.

ORGANIZATION

Mr. Chairman: We have a quorum. We have with us two guests today: Miss Chris Martin, who works with the Ombudsman's office--she works out of the Legislative Building--and Brian Goodman who, I don't know if I have this right, is counsel and special adviser to the Ombudsman. Brian has a few words to say to us today.

Mr. Goodman: Thank you, Mr. Chairman. Mr. Chairman and members of the committee, I just wanted to extend greetings to you from the Ombudsman, the Honourable Donald R. Morand.

Mr. Morand unfortunately was unable to extend his greetings to you personally. He is meeting at the present time with the Health Disciplines Board, its chairman and counsel, with respect to a matter that, interestingly enough, had to be resolved before the Court of Appeal before our jurisdiction was confirmed. Our investigation into that matter is now complete, and the Health Disciplines Board has requested a meeting to discuss the results of the investigation and where we go from here.

I would also like, on behalf of Mr. Morand, to renew his invitation to each and every one of you to visit the office either collectively or individually. You probably received, before the commencement of the postal strike, a letter from Mr. Morand dated July 7 extending that invitation to you. The new members of the Legislature will have received an earlier invitation before this invitation. I know that Mr. Dean and Mr. Barlow took us up on the invitation and were kind enough to come to visit us at our offices to see our facilities. I can only say that I believe your clerk shares my view that a visit to our office would prove very instructive to you in the very important consideration of our work.

10:20 a.m.

I would also like to say hello to our friend, Mr. Miller, who is the only alumnus on the committee I can see.

I would also like to assure each and every one of you of our complete co-operation at the Ombudsman's office in assisting you with your very important work. I know that in the past the relationship between the Ombudsman and the committee has not always been the best, but those times are long behind us. I think your clerk will confirm that, certainly during the last two or three years, we have extended to the committee every co-operation, and we will continue to co-operate with you as you review our work. Your work is very important to our work, because, as Mr.



Morand said in his first report as Ombudsman, the committee is the final arrow in the Ombudsman's quiver.

One of the things you will be called upon to do, as you see from the agenda, is to assist in resolving those cases where a governmental organization to whom a recommendation has been made by the Ombudsman has, for its own reasons, declined to implement the Ombudsman's recommendation. One of the functions you will be called upon to perform will be to review the Ombudsman's report and the government's response and to report your views to the Legislature.

I also share your clerk's views that this has been the most nonpolitical committee of any parliament whose work I have ever been privileged to review, and that the committee in the past has taken its work extremely seriously.

So good luck in your deliberations, Mr. Chairman and members of the committee, and if we can be of any assistance to you, please don't hesitate to give us a call.

Mr. Chairman: Thank you very much, Brian. We appreciate your coming down today to speak to us. One thing which you did mention and which I want to emphasize is that I hope this committee will adopt a stance similar to the one you have talked about: a nonpartisan approach in our dealings with matters before us. Thank you once again, and we will be seeing a lot of you come September.

Mr. Goodman: Thanks very much. Chris is in room 157, as you mentioned, Mr. Chairman, and if she can be of any assistance to the committee as a whole or to the individual members dealing with their constituency problems she is just down the hall.

Mr. Chairman: I will move on to the routine business on the agenda: the election of a vice-chairman. Do you have any nominations for vice-chairman?

Mr. Dean: It occurred to me, Mr. Chairman, that Gordon Miller is the only continuing member. If you are willing to accept him I would be pleased to nominate him.

Mr. Chairman: Are there any further nominations?

Motion agreed to.

Mr. Chairman: Congratulations, Mr. Miller. We expect at least an apple a day.

Mr. Philip: On that topic, Mr. Chairman, I would just like to put on the record that I feel that, because of the nonpartisan nature of the committee, this committee is in some ways analogous to public accounts; and, notwithstanding my great respect for the present chairman of the committee, I think at some future time, hopefully, the House leader should consider that an opposition member should be chairman of this committee, the same



way as the standing committee on public accounts should have an opposition chairman.

That is in no way a derogatory remark against you, Mr. Chairman. Being new to the committee, I do not know how good or bad a chairman you are. I assume from everything I have heard that you are quite a good chairman. I just thought I would mention it.

Mr. Chairman: Thank you. I do not know who told you I was a good chairman because no one has seen me in action as a chairman yet, but anyway I am going to make every effort to be a good chairman.

Mr. Shymko: We have high expectations, Mr. Chairman.

Mr. Chairman: I appreciate your remarks. From the initial establishment of this committee, I believe I am the first government member to sit as chairman. In the past, they have all been members of opposition parties.

Mr. Shymko: Referring to Mr. Philip's suggestion, has this been discussed before or is this the first time that you--

Mr. Philip: I have no idea. The concern I had is something that perhaps I will have an opportunity to bring up with my House leader.

Mr. Shymko: I wonder whether the Liberal caucus has ever discussed this.

Mr. Dean: A thought on the matter Mr. Philip has raised is that, so far, from my outside perception of what the Ombudsman does, I think he is just as likely to be going to bat for things the government members think should be untangled for the brass as any other member of the Legislature.

Mr. Philip: That is the very point I was making. So does the public accounts chairman.

Mr. Dean: I do not readily see that it makes a difference to any great extent whether there is a government or nongovernment member.

Mr. Philip: I knew you would be in agreement with my argument.

Mr. Dean: With a different conclusion.

Mr. Chairman: Let us move on with the agenda items. The provision of Hansard coverage: It has been traditional that the minutes of the meetings of the select committee have been transcribed and we require a motion to have that tradition carried on.

Mr. Eves moved that there should be Hansard coverage.

Motion agreed to.



Mr. Chairman: Item number three on the agenda is staffing. This deals primarily with the question of whether or not this committee should retain outside counsel or instead use the services of the internal staff. I have discussed this with the clerk of the committee. To a certain extent we have also discussed this with Linda Grayson, chief of library research services. Because of the fact most of us are new to this committee, with the exception of Mr. Miller, I think it would be advisable that we give serious consideration to retaining Mr. John Bell who has been counsel for the committee since its inception.

Mr. G. I. Miller: I would agree that we should because he has had a lot of expertise and has been with the committee from the very beginning. He is knowledgeable and fair. I would suggest that and make that motion.

Mr. Van Horne: Mr. Chairman, I do not want to be tacky here. We should discuss two points. Do you want counsel? If you establish you do, then you determine which counsel you want. It seems we are leaping right at Mr. Bell. I have very little knowledge of Mr. Bell. If we make the decision to go ahead, I wonder if there is any reason for not carrying on. I have to defer to Mr. Miller or to Mr. White for some kind of input from them. I do not know how good Mr. Bell is or whether there is any merit in making a change occasionally so that we do not keep running the same kind of pattern.

10:30 a.m.

Mr. Chairman: I agree. Your point is well taken. We should discuss this in broader terms than simply appointing Mr. Bell or not appointing him. Perhaps Mr. Miller or the clerk could expand on this. He has played a leading role in the deliberations of the committee in the past in terms of assisting the committee in preparation of a plan of action, in fact, leading the questioning during the meetings. Although there is some pressure apparently to use the services of internal counsel, it was thought that perhaps we could consider, in any case, retaining Mr. Bell because of the lack of expertise and experience on the committee.

With the assistance of counsel from internal staff, who would be assisting Mr. Bell, we could be accumulating experience so that at some point within the next two or three years we could look at using internal counsel rather than going to the expenditure and cost involved in retaining outside counsel.

Mr. Philip: On that topic, Mr. Chairman, in the standing committee on administration of justice, we found that we had some excellent research work done by a lawyer who is on the staff of the library research department, Merike Madisso. I recognize that she is already working with another committee and therefore it would be impossible, but perhaps the route the committees should be recommending is an expansion of the library research staff, possibly with the inclusion of another person with a legal background so that committees like ours can use staff researchers and, indeed, in between committee work MPPs like ourselves will have that valuable research facility at our disposal.

It is probably in terms of dollars and cents cheaper in the long run to have another staff lawyer on the library research staff who will be ongoing with a committee rather than hiring external legal counsel every time we need it. I do not know; you may want to look at the economics of that.

Mr. Chairman: In talking to Linda Grayson in terms of what the counsel has done for the committee in the past, she just did not feel that her staff person who would be made available to the committee would be qualified to handle all those functions. That is why we felt there could be some kind of an easing in procedure adopted so that at some point in the not too distant future, we could use internal counsel.

Perhaps the clerk would speak to the question brought forward as to the necessity of retaining counsel.

Clerk of the Committee: Mr. Chairman, I am not sure this is really something the clerk should be commenting on. It is really a decision for the committee. The one thing I can say is that I am not a lawyer. I will do my best to assist the committee in whatever respect I can but a good many of the questions that come before the committee and the people who come before the committee tend to be of a legal nature that are simply not my province to deal with. If the committee feels that it needs additional assistance, that is a decision for it to take. I am not really sure I should tell the committee what to do.

Mr. G. I. Miller: Mr. Chairman, I think again if I may make a couple of comments, I certainly do not think it does any harm to review and decide on what direction we would like to go for efficiency and for cost savings.

We did have people like Mr. Pat Lawlor as chairman. Mrs. Margaret Campbell, a lawyer, was on the committee. In order to review them fairly, our legal adviser was in a position to do that. I think his costs were based on a per hour basis and he did a good job. So I have no hesitation in supporting John Bell. We had very few complaints that I am aware of from any party and therefore I think he does have a lot of knowledge that would be useful for us and useful for the people of Ontario.

Somebody else coming in new is going to have to do all the research and start from scratch, so I have no hesitation in supporting John Bell. The need for it is, in my opinion--I am not a lawyer either--it would be useful for the committee.

Mr. Dean: I could remind the committee that we do have a lawyer on the committee in the person of "Landslide" Eves. I do not know whether he feels he is an expert on the role of the Ombudsman. Being new as I am, I would feel more comfortable with the recommendation Gordon Miller has made, that at least for a beginning period we consider going with the person who is familiar with the work so that we are not breaking in a new person there as well as six new members of the committee.

I can certainly see from what I know, which is obviously not



100 per cent of the work of the Ombudsman, that the legal aspect of it is a very significant factor. I would think we do need advice and I would be prepared on the recommendation of Gordon Miller to support the engagement of Mr. Bell.

Mr. Eves: I agree entirely, Mr. Chairman. We definitely are going to need some legal direction and, as Mr. Miller points out, being the only member of the committee with some experience on this committee previously, who better than Mr. Bell who from all accounts has done a very good job in the past and has the experience and the background.

Mr. Shymko: I wanted to make two comments. First, being a new member of the committee along with other colleagues, I feel there is no doubt we need legal advice. On the question of whether it should be internal or external legal assistance, I would not base that assumption that it should be internal simply on the cost factor of the financial implications of having cheaper legal assistance internally and a more expensive one outside. It is the calibre of the individual and the lawyer should be the top priority rather than saving money.

Secondly, there is a natural tendency a legal person on the committee year after year will develop not only a sense of security, but perhaps an overbearing confidence. It is also good to have occasional changes, not to have the same lawyer continuously year after year. This committee will function for at least the next four or five years and because we are new, I would suggest that Mr. Bell certainly assist us at this time, but I would look at the possibility of somebody else perhaps the following year.

Mr. Van Horne: I have a question to the present staff, Mr. Chairman, unless perhaps you can answer it. What kind of contractual arrangement is made with Mr. Bell or any outside lawyer? Is it for a specific job or for a specific period of time?

Mr. Chairman: If you refer to your budget, this is what we have in front of us. Perhaps Mr. White can correct it. We are looking at an hourly basis.

Mr. Van Horne: How do you agree to that? Do you say, "We want to retain your service for the next month, next year, next whatever?"

Mr. Chairman: I will refer that to the clerk.

Clerk of the Committee: Mr. Chairman, that would essentially be a question to be negotiated between the chairman and the counsel. Most of the agreements in the past that I have been aware of would allow for a termination on either side at very short notice.

Mr. Van Horne: Back to you, Mr. Chairman, in light of the--I can't call it consensus because we have not heard from the New Democratic Party members--but it would seem that there is some consensus from two thirds that Mr. Bell's service be retained, but

not necessarily for the entire length of time this committee will sit through the Thirty-Second Parliament. It seems to me the message is we would like him for a year. If the third party concurs can that message be made very clear to him?

Mr. Chairman: I am just sorting this out for discussion. I wonder if that is the message we want to make at this point. The majority have not dealt with Mr. Bell. In my opinion, from the outset we should not be indicating clearly to him that he is only here for a year. Is that a consideration we can make today?

Mr. Philip: I would rather put it in more positive terms, that we will make a commitment at this point that Mr. Bell be retained for at least this year. At the same time we reserve the right to look, along with the library research and perhaps the clerk's office, the possibility of having a lawyer on staff as an additional researcher with a view to servicing this committee and other committees. If that is acceptable to Mr. Van Horne, I think perhaps that would be in a more positive vein.

10:40 a.m.

If at some future time the Legislative Assembly decided to hire an additional lawyer, Mr. Bell might be an ideal applicant in light of his experience. That's a more positive way of putting it, I think.

Mr. Chairman: Mr. Miller does have a motion and if he is willing to amend it to--

Mr. G. I. Miller: I agree with the comments. Is Mr. Bell willing to take on the responsibilities again? I am assuming he would. I would amend the motion to take in those considerations.

Mr. Chairman: There is one thing I would like to look for direction here. I mentioned to you that we had talked to Linda Grayson. I would like to recommend to the committee that we deal with internal staffing as a separate motion so that we can request an individual from internal staff to be an assistant to Mr. Bell this year. She has developed some expertise and knowledge of how the committee functions so that it will put us in a much better position to make that decision come the end of the year. We can deal with that in two separate motions if the committee agrees.

Mr. Shymko: Is there a need for additional legal counsel? Is it administrative work or--

Mr. Chairman: The need is, if we want at some point to determine whether we are going to retain internal counsel, we have someone on staff who has knowledge of how the committee operates and how counsel operates on this committee and would be in a position hopefully to assume that role.

Mr. Shymko: I understood this was an assistant to Mr. Bell, the legal counsel. Is this on a permanent basis or is it just for the time being?



Mr. Chairman: The clerk suggests "understudy" is perhaps the better description.

Mr. Shymko: Was this the case in the past that we had extra staffing?

Mr. Philip: Can we have the original motion and then deal with that?

Mr. Chairman: Is there complete understanding of what the original motion was?

Motion agreed to.

Mr. Chairman: We require a second motion in reference to the use of internal staff to act as an understudy.

Mr. Shymko: The Ombudsman's committee has functioned for a number of years. Did we from past precedents develop a need or does the clerk perceive a need for an extra staffing person--as the chairman terms "an understudy"?

Mr. Chairman: I don't want to put the clerk on the spot on this. This is really trying to meet the concerns about whether we should have outside or inside staff and really to allow someone internally to obtain some expertise in the operations of this committee. That's the objective of the exercise.

Mr. Cooke: Maybe you could repeat your proposal on who this individual is. It is an internal person from where we are talking about?

Mr. Chairman: It is an internal lawyer who simply is, as Graham suggests, to sit in on the meetings to get the flavour of the operation.

Mr. Cooke: The function of this committee is an interesting one and I am not sure it is all that much more complicated than some of the other committees we have. If the committee at some point decides to go the route of having internal counsel, I don't think it would be that difficult for someone to be in touch with the clerk's office, the chairman, the Ombudsman's office, to find out how the committee has functioned and learn it without having to have someone sit in on these meetings for two weeks--three weeks, whatever, as an understudy in case some time in the future we may go the route of having internal legal counsel

I think it is an unwise expenditure of funds. Even though it would not show as an extra expenditure, because it would be coming from a ministry or from Government Services through the library or whatever, it is still taking somebody away from a job he would normally be doing and somebody would have to do it. It is an expenditure of funds. I am not convinced it would be a wise move at this time.

Mr. Van Horne: Mr. Chairman, I am wondering if you got this name sort of by chance, or was this person suggested to you

as someone very interested and the likely person from staff that could carry on if we chose not to have outside counsel. How did it occur?

Mr. Chairman: The name was indicated to us as the likely person if we went with inside counsel.

Mr. Van Horne: Now that we have decided to go with outside counsel I would be inclined to agree with Mr. Cooke that it might be a bit of a waste. I know there is no direct charge to this committee. I do not know how they charge out the time of internal staff, but it would strike me it might be more worthwhile to get rolling with Mr. Bell. Then as the year progresses we could get back to the person who is the overseer of that internal staff and say to that person the committee feels that perhaps at the end of the year we would be ready to go with simply internal staff. We could ask who would be the most likely candidate--would the same person suggested in July 1981 be the most likely one.

I am not sure we have to proceed with it right now. I will leave it with you to remind us some months hence that we might consider internal staff. If the committee feels the same we might ask that we go back to the supervisor.

Mr. Chairman: Are there any additional remarks?

Mr. Barlow: I would concur with the remarks that were made and say that we go with what was said. As far as an assistant to him is concerned, I do not think that is required at this time. By the time this committee has finished one year's operation under Mr. Bell, if we decide to move to somebody else we would be able to direct that person in the operation.

Mr. Shymko: Mr. Chairman, I do not think we should lock ourselves in with one particular individual. If we do decide in time to go to internal counsel I am sure that in addition to the individual you were contemplating that there are others internally. Having him appear before this committee to prepare himself for eventually becoming the internal counsel would be presuming that he definitely will be getting this job. We may find ourselves, in a year's time, that there may be other candidates, internal counsel, who would be perhaps better. It is just to give yourselves more flexibility and not locking yourselves in, so to speak, with an indirect commitment to that person in case we opt for internal counsel.

Mr. Dean: I agree with the other comments about procedure. There is one other thing, I think, that has been alluded to but not definitely said that I would like to see happen. That is that we do get an estimate of the comparative costs of the alternative routes maybe sometime before the end of the first year's operation. I do not mean just surface costs but real costs. There is 30 or 40 per cent more than you see on the surface in the cost of the internal person. Mr. Cooke referred to the work the person is doing and the hours spent somewhere else. If that would help I would agree that the cost should be determined.



Mr. Philip: I think if we are doing that we should make it fairly clear that what we are talking about is possibly recommending the hiring of additional staff. I think the library research people are already very busy, and there are certain committees that need a lawyer on a fairly regular basis for research--namely the justice committee. So I would hate to, in any way, imply that we are cutting into some of the work of that committee, or some of the very important needs of another committee that may need legal research staff. I think Mr. Dean made an excellent suggestion.

Mr. Cooke: So eventually we will take it out of the private sector and put it in the public sector.

Mr. Philip: Are you trying to make our suggestion pass, or are you trying to sabotage it?

10:50 a.m.

Mr. Chairman: Well, the clerk has directions to follow up on that suggestion.

Perhaps we can move on then to the program of work. Brian Goodman was talking to us about a meeting with the Ombudsman. At some point I must open up for discussion the fact that we are scheduled to meet in September. Perhaps on the first day of our meetings with the Ombudsman we can take a look at the emphasis and meet with the staff. That will take up our first day. Is everyone in agreement with that?

Mr. Dean: As I mentioned, I would like to make sure we see the Ombudsman's personal office--

Mr. Chairman: Also we will be meeting with the senior people at that time to discuss our various roles. All right, we will look at the first day in our schedule.

To review this generally: What the committee has undertaken in the past, Graham has outlined in the review of the report. Do we all have a copy of the report? If anyone is short of a copy we will have one sent around to the office. No problem there?

Interjection.

Mr. Chairman: We are not going to be dealing with it today. We can get one around to you.

The clerk advises that if anyone requires back copies of any of the reports, just to let him know and his office will have them sent out.

The operation of the office of the Ombudsman: There are only two cases of recommendations being denied in this report and I believe they are both Workmen's Compensation Board cases.

Counsel also has indicated other typical or significant cases in the past. Mr. Miller might want to comment on this and

this is something else we could perhaps deal with at our first meeting. Counsel has pulled out one or two from the number of cases the report considers significant and recommends the committee takes a look at them. We can follow up on earlier recommendations which are included in the report and we will see what the status is of some of those recommendations from the committee in the past.

Mr. Philip: I wonder, Mr. Chairman, under that first item, do we spend some time looking in a comparative way at what ombudsmen in other jurisdictions are doing and their role? And do we make any recommendations on the role of our present Ombudsman? Are we talking about a one- or two-day briefing session dealing with what the Ombudsman in Ontario does, or are we looking at what he does and what he should be doing in the eyes of the committee? What exactly is meant by the first item?

Mr. Chairman: The clerk advises me that in the past, apparently, the committee has on some occasions done what you are suggesting--compared it with the role in other jurisdictions and made comments in terms of--

Mr. Cooke: That will tie in with the last item on that end of the section.

Mr. G. I. Miller: Mr. Chairman, I suggest that you review some of the reports that were brought in and that the recommendations be brought up to date. I think that is the first thing that should happen so all members are aware of the recommendations that have been made and we can start where we have left off.

Mr. Philip: I think it would be useful if we had kind of a thumbnail sketch or report bringing us up to date on the role of ombudsmen in other jurisdictions. Maybe that is part of a previous report, but if it is perhaps we could have copies of that. I would find it useful.

Mr. G. I. Miller: I think, Mr. Chairman, that is one role our legal counsel should bring us up to date on. He can use that expertise to fill us in on the facts and make those available to us. We have had the opportunity of touring in Europe and Far East countries to look at the work of the ombudsmen that has been carried out in those areas, and those are all documented and available. We have been across Canada and we have met with many American states which have an ombudsman. That has been carried out. Those reports are available and we should be made knowledgeable of that.

Mr. Chairman: Apparently the (inaudible) report carried extensive detail on the trip through Europe and Israel. We can have a copy of that report sent around to all the members.

Mr. Van Horne: You are not suggesting that will be the extent of our travel.

Mr. Chairman: That is coming up.



Mr. Shymko: If I could suggest, Mr. Chairman, if either the clerk or yourself could compile a list of those reports and certain pertinent recommendations that were made by the committee in the past for the new members of the committee, I feel there is a lot of homework and in order not to waste time reading or reviewing things, we could focus on some of the important recommendations made in the past in some of the reports--perhaps a selection of material as well as a brief resume of the function of ombudsmen in other jurisdictions.

There may be something in the two bills proposed at the federal level for the creation of an ombudsman's office. It is the national scope and not a provincial one, but there may be some interest in aspects of that federal office of the ombudsman that we could look at.

Mr. Chairman: Fine, we will do that. At this point, with the exception of Mr. Miller, we are new so if there are additional areas we perhaps want to touch on, I would open it to the committee, if any member feels there are additional areas we should be looking at other than what is outlined here. Does anyone have any suggestions at this point? If not, we will move on to possible travel.

Mr. Philip: Can we agree that the agenda can be expanded as we go on? Most of us, with some exceptions, are new to the committee and, therefore, we are probably going to uncover things we may want to look at at a later date?

Mr. Chairman: No problem.

Mr. Shymko: I wanted to ask, are we going to call witnesses before this committee? Has there been a suggested list of witnesses? Is there allowance in the budget for covering the expenses of witnesses who may be called before the committee?

Mr. Chairman: I will have to again refer that one to the clerk as to the details of the budget, if they have had that in the past.

Mr. Shymko: I just wanted to ask if there are any plans to call witnesses before the committee. I don't see it in the recommendations. Do we want to call some of the people whose cases that have been denied or--

Mr. Chairman: I will refer that to the clerk.

Clerk of the Committee: In the past a very large percentage of the witnesses who have appeared before the committee have been either the staff of the Ombudsman's office or the staff of the agency to which the Ombudsman's recommendation is directed. In this case it would be the Workmen's Compensation Board people. That has not incurred any expenses to the committee.

Occasionally the committee has found it necessary to bring in field staff from the various ministries and has picked up their expenses, but this has not been a frequent occurrence or a very

expensive one. Again, it's up to the committee what the committee wishes to do, but the past practice has not been to bring the complainants before the committee. Therefore, there have not been expenses incurred by individual members of the public coming before the committee.

Mr. Shymko: My understanding therefore is that it is quite rare to have witnesses from the public sector?

Clerk of the Committee: Yes, that has been the previous committee's choice.

Mr. Shymko: Do we presuppose that this will not be occurring in the future, or should we allow for the possibility? I don't know. Do we simply call the staff of the Ombudsman as witnesses, or the staff of any particular government agency? Are we limited only to government agencies and the Ombudsman's staff? I am sure that this committee in calling witnesses cannot or should not limit itself to that, and we should have the flexibility of the option if there is a need to.

11 a.m.

Mr. Cooke: I think one of the concerns a citizen has is confidentiality, when we do not necessarily deal with the individual. The Ombudsman acts on the individual's behalf. Workmen's compensation will work on their behalf, and the lawyer works on our behalf.

Mr. Chairman: Well, apparently there is sufficient flexibility within the budget if we deem it necessary to call a witness. The provision is there.

Possible travel: I just have a couple of comments on this. In 1978--Mr. Miller can comment on this--the committee travelled extensively through Europe and Israel. There has been some travel in the past few years in Canada, I guess--just going to various provinces, Alberta and Quebec. I don't think that we're in a position today to recommend any specific travel plans and to forward a budget to the Board of Internal Economy.

What has been suggested is that we could ask our staff to take a look at various jurisdictions that have an operating ombudsman and how they relate to the operations in Ontario, how they report to the Legislatures and so on, and he can come back to us at some point in the future with this information and perhaps some recommendations. I don't know if that is appropriate.

Mr. Philip: We can always go for another supplementary budget. There is no need to include it at this time.

Mr. Chairman: That's right. We put it on the agenda so we could mention to you the approach that has been recommended.

Mr. Dean: I would not like to think that we would have to reinvent the wheel if so many jurisdictions have already been covered by extensive travel. I wouldn't think it would be a good



use of public funds to have us go over a lot of the same problems again. Maybe no one is suggesting that.

Mr. Chairman: Well, there are still a number of jurisdictions that have not been covered yet.

An. hon. member: Have you ever been to Australia?

Mr. G. I. Miller: The Ombudsman is a relatively new operation. But you may be well aware that they have had some problems in bringing everything into place. If it is necessary to travel it would be useful for the committee to make that decision that we could travel to--I think last year it was Winnipeg, a kind of annual meeting. Again, I don't believe that anyone went from the committee--they didn't feel it was necessary--but that is a decision the committee can make as we go along. I think it would be useful in carrying out the functions for Ontario, to protect the people of Ontario. I don't think we would have any trouble supporting it, and I suppose at that time it would go through cabinet for its approval.

Mr. Chairman: All right. Well, the staff will prepare a list comparing jurisdictions and what benefits there may be for us in visiting a specific area. And I think we could also look at annual meetings and that sort of thing which are taking place.

Mr. Cooke: We would not be talking about travelling this fall in any case. We would be talking about next January.

Mr. Chairman: That's right.

Mr. Cooke: I am sure that when the staff are preparing the jurisdictions they will keep that in mind.

Mr. Philip: I think Winnipeg in January is excellent, Mr. Chairman. It invigorates the lungs.

Mr. Chairman: You notice that Mr. Miller said no one went last year.

Mr. G. I. Miller: I might add, too, Mr. Chairman, that I have never travelled outside the province as long as I can remember, but I didn't deny the rights of those who wanted to go on the other tour. They brought back a lot of good information.

Mr. Shymko: There are also international conferences such as that of the International Bar Association, which always deals with the area of responsibility of ombudsmen and their role in various countries. So we may look at the possibility of attending or sending someone to that particular body.

Mr. Chairman: Is there anything further on this item that anyone wants to mention?

We will move on to the final--no, it isn't the final--number five, budget. You all have a copy of the budget? It is pretty straightforward. We are looking at a schedule right now of two

three-day weeks in September, and two three-day weeks in February. I have been advised that if personally we feel it is necessary to have additional sittings of the committee, that is really not a problem in terms of the budget.

Mr. G. I. Miller: I wanted to clarify one remark from my colleague, Ron Van Horne, indicating that we don't have enough time. But I think again we can adjust it. And I think if it is clear that there is not enough time to deal with the report and bring everything up to date we can expand on that.

Mr. Chairman: That's right. As you can see in the budget before you, because we haven't determined whether we are going to retain an outside counsel or not there is no figure for counsel. The clerk suggests a figure of \$20,000. That again is flexible.

Mr. G. I. Miller: Mr. Chairman, do we have an actual cost?

Mr. Cooke: Before we get to counsel I would like to ask about the per diems. I wonder if there is a budget in here for those of us who had to interrupt our vacations to come down for an organizational meeting today?

Mr. Chairman: Yes, there is. Perhaps before we go any further the clerk could outline just how you claim for your expenditures for today. The clerk indicates that there is no provision for pain and suffering in the budget, and he will outline how you claim for expenditures today at the end of the meeting.

So we have a suggestion of \$20,000 for counsel. It's the only change in what you have in front of you. What kind of total does that give us?

Clerk of the Committee: Mr. Chairman, that would total \$50,376.

Mr. Chairman: I might point out that the budget last year was \$68,800, of which we spent only around \$37,800, I think it was--something less than \$40,000, in any event. They were considerably under their budget. So we are looking at a total budget of \$50,376, and we do have a motion to accept? I think Mr. Philip already moved a motion. Any additional comments or questions?

Mr. Cooke: Would counsel actually attend the meetings? For example, in the fall when we are dealing with two cases he is certainly not going to be coming with us to visit the Ombudsman's office, I would suppose. We are not going to be paying him an hourly rate for that.

Mr. Chairman: No. Looking at the 1980 budget it was \$75 per hour, a figure based on an average of 400 hours at \$75 per.

Mr. Cooke: The chances are that we are going to be considerably under budget of that \$20,000.



Mr. Chairman: The clerk indicates that last year they spent \$24,000 of a budget of \$30,000.

Any further questions on the budget?

Motion agreed to.

Mr. Chairman: The final item: other matters. Does anyone have anything he would like to bring forward at this time? Mr. Clerk, is there anything that you might bring forward? Nothing?

The committee adjourned at 11:07 a.m.

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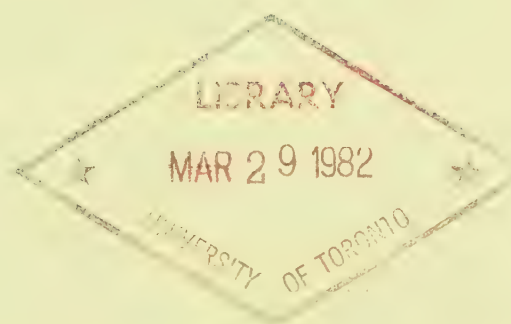
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SELECT COMMITTEE ON THE OMBUDSMAN

OMBUDSMAN'S EIGHTH REPORT

WEDNESDAY, SEPTEMBER 9, 1981





SELECT COMMITTEE ON THE OMBUDSMAN

CHAIRMAN: Runciman, R. W. (Leeds PC)  
Andrewes, P. W. (Lincoln PC)  
Barlow, W. W. (Cambridge PC)  
Boudria, D. (Prescott-Russell L)  
Cooke, D. S. (Windsor-Riverside NDP)  
Dean, G. H. (Wentworth PC)  
Eves, E. L. (Parry Sound PC)  
Kells, M. C. (Humber PC)  
Miller, G. I. (Haldimand-Norfolk L)  
Philip, E. T. (Etobicoke NDP)  
Shymko, Y. R. (High Park-Swansea PC)  
Van Horne, R. G. (London North L)

Clerk: White, G.

Counsel: Bell, J.

From the Office of the Ombudsman:

Bohnen, L. S., Director, General Investigations  
Bottin, K., Co-ordinator of Systems Development  
Goodman, B., Counsel & Special Adviser to the Ombudsman  
Macerollo, R., Director of Correctional and Psychiatric Services  
Mills, J. A., Controller  
Morand, Hon. D. R., Ombudsman

LEGISLATURE OF ONTARIO

SELECT COMMITTEE ON THE OMBUDSMAN

WEDNESDAY, SEPTEMBER 9, 1981

The committee met at 2:15 p.m. in room No. 228.

OMBUDSMAN'S EIGHTH REPORT

Mr. Chairman: Before we start, Mr. Morand, on behalf of the committee, I would like to thank you and your staff for the excellent day and a half you provided us with. It was a very valuable insight into the operations of your office. I know it is going to assist us in our deliberations ahead. Thank you very much. At this point, I would like to turn the proceedings over to our counsel Mr. John Bell.

Mr. Bell: Mr. Chairman, as your schedule indicates, we are going to touch upon matters that are contained in Mr. Morand's eighth report. Because he is only available to us for approximately an hour or less, I would like him to touch upon four of the items that are under that list.

First, we will invite him to make any comments, general or specific, that he wishes to make in respect of your eighth report. Mr. Morand did not make any comment as to that report in his eighth report and, I am sure, wishes to touch upon it in some way. Also, sir, I would like to touch upon the matter of the correctional report, North Pickering, and amendments to the act. I know one of those three is dear to my heart since I am the longest survivor and one of the parties privy to that original agreement of North Pickering. I know we would appreciate hearing your comments.

First, and as is my practice, my question is always five times longer than the answer but, for the committee's benefit, if you have the eighth report of the committee before you, you might just note the following pages for reference.

I will not spend any time reading them because Mr. Morand, I am sure, has read them and has some comments prepared. For example, at pages 17 and 29 to 31 of the eighth report, the committee makes some comments and observations in respect to the organization of the Ombudsman's office and, in particular, the number of files he has at any time in progress, the inventory, if you will, and the duration which it takes to close those files.

Those comments were made last time, specifically as a result of the committee's review with Mr. Keith Bottin and others. Mr. Bottin, gentlemen, you will meet later this afternoon as to the statistical analysis comparing fiscal 1979 with fiscal 1981 and any trends which were perceived there, and also in respect of the Workmen's Compensation Board files in progress that appeared to the committee--it did not appear, but was conceded by all--represented the largest backlog by numbers and percentage and also the largest duration files respecting closing.



Mr. Morand, with that specific background and in a general way, sir, please now make any comments to the committee which you feel appropriate. I do not mean to confine you to those parts of the report.

Hon. Mr. Morand: Thank you very much, Mr. Bell. Mr. Chairman, members of the select committee, I am very pleased to be back with this committee again this year. It is now substantially changed in complement. I believe Mr. Miller is the only carryover from the previous select committee. Mr. Bell, the counsel, and Mr. White, also, of course are here, but Mr. Bell and Mr. White are not members of the committee.

First of all, to deal with several matters which were brought up yesterday, there were questions as to the complement investigating it. I have given a copy of that to Mr. Bell--the number of investigators from the day the office opened and the total number of employees from the day the office opened, based on December 31 each year from 1975 through 1980 and to June 30, 1981. The number of permanent investigators in June 30, 1981 is plus two of what was listed there. There were two vacancies at that time, so there will be a total number of 37 permanent investigators rather than 35.

Mr. Cooke: It would be helpful if we had ours before you went on.

Mr. Bell: I am sorry. While that is being done, Mr. Cooke and other members of the committee, by all means, any comments you may have of Mr. Morand, while you have him here, should be made. But the effect of these statistics will become much more apparent and meaningful as we review with Mr. Bottin the statistical analysis.

I have already alerted Mr. Bottin and others in the office that one exercise the committee will probably engage in for the periods referenced will be to compare the total investigative staff with the work load within that same period for comparative purposes, Mr. Cooke, to see whether there has been any response in terms of numbers to any increased work load or vice versa. I do not mean to cut you off, but I just mean to assure the committee that this will be dealt with in more detail by others.

2:20 p.m.

Hon. Mr. Morand: Thank you, Mr. Bell. In view of that, I also have another table given to me by Mr. Bottin about the north country on a question asked yesterday, but I will not get into that because I know he will be discussing it with the committee later on.

What I wanted to say in that regard only was, certainly with the time available, it is impossible to come to a conclusion that the opening of the two offices in the north increased our workload in the north. Although the numbers would appear to be up, whereas you might expect them to be down with other indications, it is difficult to say that that was occasioned by the opening of the two offices. One can suspect that that is so but, according to Mr. Bottin, the statistics are not such that you can categorically make that statement.

Getting back to the eighth report of the select committee and my comments therein, in reviewing the pages mentioned by Mr. Bell, there were several things which the select committee was concerned with in our seventh report last year. The first was that there appeared to be a drop in the number of files opened and at the same time a drop in the number of file closings. That was quite correct last year. The committee was concerned why that happened and wanted to take a look at our report this year to see whether this indicated a trend and, if it was a trend, whether the cause could be identified.

The number of files opened decreased again this year, but the numbers of files closed increased. So there is no trend certainly as far as closing of files is concerned. The number of file openings has decreased, I think, for two reasons. One, I think we are basically down on the number of complaints. But, also, a larger indication, and the reason for it, is the no-follow-up procedure which we instituted roughly a year and a half ago wherein we do not open files where there are matters that are going to be dealt with in a matter of a few days.

We have a form that is used, and we don't go to the trouble of opening a file and then having to close the file a week or two weeks later. There is a substantial saving in the cost of buying files, filing files, closing out files and putting them in the archives when the times come around to so place them.

There are those two reasons why I think there is a decrease. One of the reasons for the decrease in the actual number of complaints was the location and the place in which we held our hearings. It is interesting to note that our complaints in the first three months of this year, the current year that we are operating in right now, are up. Mr. Bottin will give you more details on that, I believe, but they are up fairly substantially.

It looks like at the end of the year, if it continues in that way--and I anticipate it might go up because we are going back to the larger centres with our hearings--it will be up to 10,228, projecting this year through, for the total number of inquiries and complaints, as against 8,709 last year. I point out that is a projection at this stage, but I anticipate that it will go up definitely.

I would have anticipated the files closed would have gone down, because there were fewer files opened. They did go up. I think that is for several reasons. Last year when I reported to the select committee, I pointed out that we had instituted administrative fairness matters which put back every file in the office a period of time on closings because it added about a month to the length of our investigations. In contacting the person, making the disclosures to him that administrative fairness requires us to, that lowered our closings last year. We picked that up this year because there was not that month delay, and that helped us to increase our closings this year as over the previous year.



In addition to that, we had put a drive on files. We have hired some extra complement on Workmen's Compensation Board files and we have substantially improved our flow procedures in the office which I think helped us to increase our closings. Our number of files closed was up rather substantially this year over last year.

The second item which the select committee was concerned about last year was the average duration of our investigations. That was up last year, and it is up again this year. I wouldn't be surprised if it were up again next year. There are reasons for that. The no-follow-up procedure takes out of our statistics on file closings all of the short cases so that if you have 1,000 cases--and we have over 1,000 follow-up cases, I believe. Is that correct, Keith? About 1,400?

Mr. Bottin: Across the office we have 4,687. There was one area where there was a dramatic increase this year, which gives rise specifically to the increase in the duration-of-closing figure, and that was a dramatic increase in the correctional and psychiatric services area. I will speak to those numbers later.

Hon. Mr. Morand: What I am getting at is when you put those figures in and when you take them out, that is a substantial number of cases that only took seven days. When you take them out of the figures completely and only count your long cases, which in effect is what we are doing, your average duration goes up dramatically. To compare them, we would have to feed back in the no-follow-ups and see what figures we came to. Whether Keith can do that or not, I don't know; I will leave that up to him. But it would make a substantial difference in the number of days per investigation.

Last year we put on considerable drive. We ran off our records all of the files over a year old. I wanted to know why all of these files were still sitting in the office. We completed a substantial number of our old files that were outstanding. As a matter of fact, our old file closing was up 12 per cent last year.

There is a human tendency, when you don't know what to do with a file, to put it away and do the ones you know you can do something about and to work on those. I am afraid we got into problems in the office of leaving files around because we didn't know what to do with them. Our new procedure prevents that happening again, but in so doing we developed a lot of old files that had been sitting around for a number of years because decisions had to be made as to what to do with them.

There are difficult files; that also helped to increase the per diem time taken per case. There are several intangibles. It seems strange, but it is true, the older the office gets there are going to be some old files that hang on longer. When you take statistics and the office is two years old, you can't have a file more than two years old when you close it. If it is three years old, you can't have a file older than three years when you close it. When it is four years, you can't have a file older than four years. So last year we closed a number of files that were over four years old.

To give you an example, which I think is quite clear, we have 112 Pickering files which had been open for four and a half to five years. You can imagine what that is going to do to our statistics when we close those. The average per case there will be about 1,600, 1,700, 1,800 days for 112 cases.

Mr. Bell: Be careful now; we will hold you to that.

Hon. Mr. Morand: I didn't add up the actual days, but I am sure it is going to be close to that or maybe even over that. So that is also going to change our files.

A further concern of the select committee was with reference to a study that would have been implemented in our office last year, which was reported in our report last year and which Mr. Bottin will report on later.

Some two years ago now we established a study of the flow of material through our office. Every time a file stops on somebody's desk, it spends a period of time there. We wanted to study the whole flow of the work through the office to expedite the flow with the least amount of delay. The result of that has been some change in our office procedures and equipment.

Mr. Bottin was one of the co-authors of that report, and he will report to you what we have done as a result of it. It has been substantially implemented, and I think it will show real results as it gets completely implemented. I think it has already shown results and will show more as time goes on.

2:30 p.m.

The next item dealt with was the Workmen's Compensation Board. We got as high as 801 open files in the workmen's compensation department. Of that, there were roughly 100 Community and Social Services files. So we did get as high as about 700 Workmen's Compensation Board files on hand. There were cases where the investigator was not getting around to that file for close to two years after it came in. The work load was intolerable.

At the present time, the Community and Social Services files are in general. By the hard work of the investigators in the Workmen's Compensation Board branch, by hiring contract employees who were with us for a while and, in effect, by moving the Community and Social Services work out, we give more investigator time to the Workmen's Compensation Board, or special services as we call it. They have substantially reduced the backlog and they are down now to about 350 cases.

The directors of the different departments will be speaking to you later and will be available for any questions, but indications are that we may get the Workmen's Compensation Board work load down to as low as 250 files by March 31, 1982. Prognostications of that kind are always iffy because you don't know how many files are going to come in. But, at the rate we are going, we should be down perhaps that low. Three hundred and fifty is not a bad work load in that it gives each investigator about 35 files to handle. When it gets over that, the investigators get snowed under with work.



In addition to that, in the last year Ms. Ellen Adams has done a special study for our office. I referred to her earlier today when we were in our committee room, and she has done substantial work. If there is new legislation, which there seems to be coming in regard to the Workmen's Compensation Board, if the report of Professor Weiler is generally adopted and turned into legislation, I would anticipate that the number of Workmen's Compensation Board cases coming to our office would decline substantially over the next four or five years. Again, however, when you make those long-term prognostications you do so at great risk, but I think it will take some of the cases away that we get now.

One other thing we did during the year that helped us was to take out of the Workmen's Compensation Board those nonjurisdictional cases and what we call administrative delay cases--that is, a cheque didn't show up, et cetera--and put them into our research branch. In doing that, we have lightened the work load for each investigator in the Workmen's Compensation Board branch. Mrs. Catton can explain it to you more fully, but I think right now each investigator has an adequate work load but not an overwhelming work load. I don't consider we have a backlog any longer in Workmen's Compensation Board cases.

If we continue the closing ratio that we have, on average we should be closing a Workmen's Compensation Board file in a year from the time it comes in to the time it closes. There will be some cases that will go quicker than that and some that will take longer than that. It all depends on the delays you run into during the course of the investigation. But each investigator closes slightly more than three cases per month; that is the average. With a work load of 30 to 35, you are talking about 10 to 11 months and a maximum of 12 months to complete the case load that each investigator has.

Those, roughly, were the matters that the committee had concern with last year. There are other matters. There is the correctional matter which Mr. Bell referred to. Mr. Macerollo is here this afternoon and will be able to go over that with you in detail.

Earlier this year, in a discussion with him, we were down to four items that we further investigated. We talked again with the ministry about those four items. I must admit I intended to check that this morning and I forgot. I think we are now satisfied with their answers on all four. Mr. Macerollo, is that correct?

Mr. Macerollo: Yes.

Hon. Mr. Morand: There were some 110 recommendations, I believe, in the original file. Some of them are obsolete because of changes in the ministry, but they have responded quite favourably. There have been substantial changes made, and we are now satisfied that they either have accepted all of our relevant recommendations or are in the process of so doing.

The one other item mentioned by Mr. Bell was Pickering. Pickering is almost a dirty word around our office, it has been with us so long. The person in our office who was doing the report and had the hearings was Mr. Keith Hoilett who was the executive director of the office. He has now been appointed a county court judge and his report is complete. It is about six volumes long with over 3,000 pages. I have just received the first three volumes, which I have not read as yet but I anticipate will be evening reading for the next few weeks. The remaining three volumes, I understand, will be with me by the end of the week so that I will have the total report in by the end of the week.

The proposal of how we will deal with that is I have picked in my office Mr. Goodman, who is sitting next to me, Mr. Zacks, Linda Bohnen and myself. We are going to sit down and go through the report. We are going to--using a word I picked up somewhere in my life--"brainstorm" it and decide where we go with that report. I have set aside the entire week of September 21 to spend on that report and the week of October 4, starting the day after Thanksgiving. We hope to decide where we are going and what the next step of our office will be on that report at the end of the second week.

I cannot say anything further at this time on it because I have not read it yet. I do not know what his recommendations are. Until I do read it and know what his recommendations are, I cannot very well give you any further information. For background to the committee members who may not be aware of it, Mr. Bell was here throughout and could probably give you a better rundown than I can because he was already here when I became Ombudsman.

There was a Pickering study on housing done by the office and certain recommendations were made. There was another study done by the Minister of Housing at that time, the late Mr. Rhodes. An agreement was entered into as a result of the conflict. As a result of that agreement, Mr. Hoilett had these hearings, took evidence, and there was also a court case. It will take several hours to go through the whole procedure, but the result of it was that the original agreement was that the Minister of Housing would accept the recommendations made by Mr. Hoilett in his study--made by the Ombudsman actually, but as a result of Mr. Hoilett's study.

The ministry since that time has repudiated that agreement and Chief Justice Evans has suggested that it was an illegal contract in any event, that the Ombudsman had no authority to enter into such an agreement. All I can tell you is that at the end of reading it, I will have to determine where we go from here as a result of that study and proceed accordingly.

2:40 p.m.

I regret I cannot give you more detailed advice at this time, but I can tell you that having waited since I have been in the office now two and a half years or better for the report, I intend to get on it as quickly as I can and get it on its way. I hope that I will be able to have some decision by the end of October.



Mr. Bell: Mr. Morand, if I might, I would just like to deal with a couple of points while we are on North Pickering. First, members of the committee might want to reference pages 20 to 29 of the committee's eighth report, where it gives one perspective of the chronology of North Pickering. I guess the bottom line is nobody ever expected or believed that we would be here in September 1981, still talking about the implementation of the so-called agreement. As I say, it will assist you in getting some further background.

Mr. Morand, there have been two scenarios developing, I think, since you assumed office, one of which you were instrumental in commencing. That is the so-called negotiation with the ministry to a resolution of the matter in any event, or of the Hoilett report, so called. What that means is that Mr. Morand has, on occasion, met with representatives of the ministry and I believe, sir, I am correct, you have also met with representatives of the two groups of landowners with a view to seeing if the parties could not get together to break the logjam; if not to settle the whole ball of wax, at least to see whether there are some where no dispute can be found and piece them off.

I think it is fair to say the position the ministry took in that process was to wait and see what the report was going to provide. Is that still the situation?

Hon. Mr. Morand: The discussions were off the record, as it were, but there were certain suggestions made. Probably at my instigation, the ministry was prepared to do certain things. What they were prepared to do was not acceptable to the complainants. I do not want to suggest that either side was at fault in there being no settlement on that basis because, being an eternal optimist, I have not given up hope yet that there will not be some settlement of the problems, although I must admit I am not very hopeful at this stage, having tried everything I could to see if there was any way that it could be settled.

One of the problems is that there are so many complainants--112 of them--that 112 people would have to agree. I do not think there is any way of getting those 112 people to agree.

Mr. Bell: Now that you have the report and you will be dealing with it in the weeks to come, as you have described, will you be giving any thought to making another effort to see whether, with the vehicle of that report, the parties can be brought back?

Hon. Mr. Morand: Certainly if there is any hope of doing it, I will do it. I will put out feelers, as it were, to see if there is any hope after I get the report and see if there is a way that it can be settled as quickly as possible. My whole aim, quite frankly, at this stage is to clean it up as quickly as possible. It has gone on to such an extent that nobody will win on the thing. Lawyers have won, I guess you might say, but that is about all. My aim will be to clean it up as quickly as possible.

Mr. Bell: Another thing has developed, mainly because of the position the present Minister of Housing took with respect to the agreement, purporting to repudiate it, and I guess now

influenced by Mr. Justice Evans' remarks as to the legal effect, or lack thereof, of the agreement. I recall we have had discussion before with you as to the process you may now adopt. You recall there was some discussion about whether you would now go back to the act and do it through the 19.3-22.3 process. Is it premature for you to indicate whether that will be the process?

Hon. Mr. Morand: It is probably premature, but I would not be at all surprised if that is the process that we will follow.

Mr. Bell: I think there was also some discussion as to the understanding by the Ministry of Housing that they were going to receive a copy of that Hoilett report in any event. What can you say about that?

Hon. Mr. Morand: That is a very interesting point. There is a real legal argument as to whether or not I can have the authority to make that report public. It is possible that when I send a 19.3--if I send a 19.3--I might attach the report to that 19.3 letter. From past experience, if I do that, and if I make a copy available to the complainants on the administrative fairness matter, I am sure it will be a public document the next day.

I put it this way because I do not want to tie my hands in any way in the future. I have not made up my mind yet what I am going to do with it. I have not read it yet.

Mr. Van Horne: What is a 19.3?

Hon. Mr. Morand: A 19.3 is a letter that we send out to a ministry.

Mr. Van Horne: You are talking legalese here in-house talk or whatever.

Hon. Mr. Morand: It comes under section 19.3 of our act. That is why we call it 19.3. It really is a letter which sets out the result of our investigation. It says that as a result of our investigation, it appears to us that it might be proper for us to come to certain conclusions, which we set out. If we do come to those conclusions, we may make certain recommendations, and we set those out. Then we say that our lines are still open and that we have not made a firm decision on this; that if there is any further information to be given us, or any comments upon our investigation as we have set out, we would like to receive it.

We usually give them three weeks to give it to us, but we make it plain that if they need a longer period of time, we would give them longer time to make an answer. If they answer, and most of them do, we then review their reply to that 19.3 letter and sometimes do further investigation as a result. Then we have to consider whether we are going to finalize our report.

Mr. Goodman: The act also provides, Mr. Van Horne, for the right to make those representations in person or through counsel. It is a statutory requirement on the Ombudsman where he may make an adverse report.



Mr. Bell: Mr. Morand, this may be more thinking out loud than anything else. If the Ministry of Housing maintain the position that they believe they are entitled to see that report in any event, that is a position which is consistent with that agreement.

Hon. Mr. Morand: Yes, it is.

Mr. Bell: It is regrettable that Mr. Justice Evans made the comment because I note that the Court of Appeal steered away from it, and I do not know what that means. But that is a way, certainly, wherein it seems to me the Ombudsman would be permitted to provide that report because it is pursuant to an agreement which, historically, binds everybody who is directly or indirectly a party to it.

I guess all that is saying the bottom line for you is "Let's dispose of it as quickly as possible, but in the best interests of all concerned". If that way might be to go back to that agreement, with the ministry's concurrence in some way, you would probably get an urging from this committee to pursue that line.

Hon. Mr. Morand: That is why I suspect that we might go the 19.3 route because it is the quickest and easiest way to get it back into the ministry and get a response from them.

Mr. Bell: Attach it to it.

Hon. Mr. Morand: Yes.

Mr. Bell: We have got into some difficulty before. Is there any time line that you are working to?

Hon. Mr. Morand: As I have pointed out, it is over 3,000 pages, something I am going to have to read, digest and decide. Not having read it, I do not know whether I am going to have to go back into some of the transcripts of the evidence that was given, or whether I can just go ahead straight from there. I am hoping by the end of October, but I want to emphasize that it is just a hope.

2:50 p.m.

Mr. Chairman: I would like to jump in here, since Mr. Morand has to leave shortly, and open this up to the committee. If any of you have questions for Mr. Morand you may take advantage of the opportunity that we have.

Mr. Philip: Perhaps this might be more easily handled later and not take up Mr. Morand's time, but I am always interested whenever I have any government agency talk to me about files closed. The question is, how were they closed? I'm wondering if you have any statistical evidence comparing perhaps the last two years or the last year of files that were closed by a decision not to pursue any further in favour of the claimant, as compared to previous years in deciding to pursue it, whatever the final outcome. I think that that might show, if you want a philosophical thrust or change, if there is any change. I wonder if we could have it by the various divisions, corrections, and the others that are listed?

Hon. Mr. Morand: I have had Mr. Bottin prepare that information. Perhaps, Keith, you can give them that.

Mr. Chairman: Can we deal with it later?

Mr. Bell: Mr. Philip, it is in the material that you will have before you this afternoon and it's broken down, I think, fairly extensively.

Mr. Chairman: Mr. Morand, I know the concern was expressed at our meeting the past day and a half about the backlog, and you have made reference to that in the eighth committee report. What you are suggesting quite clearly, I gather, is that you feel that your office has this problem well in hand and you see it diminishing by this time next year.

Hon. Mr. Morand: Yes, I'm satisfied. We have no backlog at the present time. We have 1,570 open files in the office as of last Friday, I think it was, or at the end of last month. We can handle 1,570 open files because that doesn't mean 1,570 investigations going on at the present time. We always have an intake figure, which may vary from 100 to 200 files that are on the way through. Our intake is a couple of hundred cases a week coming in, either inquiries or investigations, so that you always have a couple of hundred sitting there that have not yet been classified as jurisdictional, nonjurisdictional and so forth. There is a constant turnover so that while we have 1,560 open files it doesn't mean that we have 1,560 active investigations going on at this time.

With the number of investigators that we have, we can handle the work load that we have got now and get on cases as soon as they come in, allocate them to an investigator as soon as they come in.

Mr. Chairman: From your experience 35 files per investigator is not an onerous work load. This can be handled.

Hon. Mr. Morand: No, it's not. But again it depends on the type of work load. Thirty-five for Workmen's Compensation Board is not an onerous work load; it's down very substantially from what it was. Correctional Services can carry a much higher work load than that because they don't have the intensive investigation. For instance, general might do less. I have one man now who is doing practically nothing at this time but one--well there is more than one complainant--one type of investigation. That's Re-Mor.

To say that a case load of 35 is wrong no matter how you put it because some can handle more without any problem and some can handle a lot less. It depends on the type of case.

Mr. Philip: Can you tell us what area of Re-Mor you are investigating since the matter is now before the courts?

Hon. Mr. Morand: We will not investigate any case that is before the courts. But there are people who are not going to courts who have made complaints, and we are investigating their complaints, not the ones that are before the court.



Mr. Chairman: But they have the option of going to court?

Hon. Mr. Morand: Yes.

Mr. Chairman: That puzzles me too.

Hon. Mr. Morand: If they don't choose to go to court, I then get jurisdiction.

Mr. Philip: Just so that I understand the procedure, if you find one way or the other, whichever the way, can someone at a later date then decide to go to court? If so, can your findings be used as evidence in a court of law?

Hon. Mr. Morand: No. They cannot use our findings in a court of law.

Mr. Goodman: They can decide to go to court.

Hon. Mr. Morand: They can decide to go to court.

Mr. Philip: If the complainant doesn't like your findings he can still go the legal route and sue?

Mr. Goodman: The act provides that. The act provides in section 29: "The provisions of this act are in addition to the provisions of any other act or rule of law under which any remedy is provided for any person," et cetera.

However, the Ombudsman's investigation, just to clarify it for you, Mr. Philip, is confined to maladministration on the part of Ontario government officials in the licensing of Re-Mor Investments.

Hon. Mr. Morand: It doesn't go into criminal conduct or any of the people who are involved. I suppose if there were some allegations of criminal conduct by a government employee, yes, we could. But that is not the complaint before us.

Mr. Philip: So basically you are examining the actions or lack of action by the registrar of mortgage brokers probably.

Hon. Mr. Morand: Right.

Mr. Goodman: And the securities commission and their involvement in both.

Mr. Chairman: Does any committee member have any further questions for Mr. Morand?

Mr. Philip: I have a different line of questioning, but I don't want to be the only one who questions him.

Mr. Shymko: I want to clear up something. If there is a case before the Ombudsman's office, before your office, can that same individual go to court?

Hon. Mr. Morand: Oh, yes, although we make it a policy--

Mr. Shymko: Do you have to drop it then, or what?

Hon. Mr. Morand: If a person has it before the court, we stop investigating until that court case is over because we are not in competition with the courts. Often a person is better off to go to court than he is to come to us because a court can make a mandatory order and he can get a judgement. Before us all he gets is our recommendation, which nobody has to follow. If a person chooses to go to court, generally we will not then investigate. If he wants us to investigate, we investigate, and if at any time he wants to go to court, we will stop investigating and let him go to court.

Mr. Shymko: In other words, you don't urge him in the process of the investigation. Let's say you are in the middle of the investigation and you give him the impression that your investigation will be over within two or three weeks. Would you suggest that he wait until you come down with some recommendation before he goes to court?

Hon. Mr. Morand: We have to be very careful not to act as his advocate and become his lawyer. We put his options to him and let him choose his option, but we can't become his lawyer and tell him what he should or shouldn't do. We can say to him, "Look, if you go to court you can get a judgement if you are successful, but with us you get a recommendation." Of course, he might also get stuck for the costs if he goes to court and loses the case. With us he doesn't get stuck for costs. All we can do is put the option to him; we can't tell him what to do.

Mr. Shymko: What if you have three individuals involved in basically the same case? Three individuals are involved. Two individuals go to your office; one has gone to court. Wouldn't any recommendation that you may make for the two individuals handled by your office influence the court handling of the other person?

Hon. Mr. Morand: The court won't hear them. The court will not get that information. It's not admissible in courts.

Mr. Shymko: I see. You will have your recommendation and you may come to a conclusion, but you are bound to keep that information closed.

Hon. Mr. Morand: That's right. It cannot be used in the court.

Mr. Shymko: Would that be the case with Re-Mor?

Hon. Mr. Morand: Yes.

Mr. Philip: I would like to pursue a different line of questioning because this is really my first opportunity to talk with you and find out some of your philosophical views on your position. Section 15 gives you fairly wide-ranging powers to initiate investigations. One of my concerns--and I see it more and more in the democratic system, not just in this jurisdiction--is that governments seem to be finding a way of getting out of



responsibility by setting up various kinds of bodies which are called arm's-length bodies but which are really fronts for that particular government so that it can take credit when things work well and dissociate itself from them and blame others when they don't work well.

Interjection: It's nonpartisan, remember?

Mr. Philip: I'm about as nonpartisan as the justice committee was when the Re-Mor matter was squelched.

3 p.m.

In the case of the Ombudsman versus the health disciplines board, there are three criteria in that judgement as to what is defined as a board or can come under your jurisdiction of investigation. One, it's established by a provincial statute; two, its members are appointed by the Lieutenant Governor in Council; and, three, it discharges a provincially assumed regulatory responsibility.

I'm not quite sure exactly what bodies you do feel come under your jurisdiction, and I asked you to check one such body, namely, Condominium Ontario, which was established under the Condominium Act. I wonder if you can talk about exactly what your feeling is about these bodies. Should they come under your powers of investigation? Specifically in the case of Condominium Ontario, does it in your opinion come under your jurisdiction? Perhaps then we can go on to a couple of other bodies that it wouldn't do too much harm to have you investigate.

Hon. Mr. Morand: Perhaps we can start with a little bit of philosophical background since that's what you are interested in. I think one of the things the Ombudsman's office was established to do was to act as a sort of watchdog over administrative boards and agencies of government.

I go back to the courts. The Supreme Court had what we call the prerogative writs: habeas corpus, quo warranto, mandamus certiorari, et cetera. There are seven of them. That allowed them to keep track of due process in the courts and to see that things were not done wrong in the courts.

With the growth of big government, the growth of boards and agencies, the welfare state so called, there was a vast increase in the number of dispute resolutions that had to be made. For example, the Workmen's Compensation Board last year made about 550,000 decisions alone. There are millions of decisions made by boards in Ontario every year. Many of those decisions cannot get to court; there is nobody to supervise them. There is a procedure before which you can get to the Divisional Court, but in very many of those cases no control over the actual decision can be made. It's only a question of jurisdiction or excessive jurisdiction. Denial of natural justice then would be the limit of the court's rules.

I think the Ombudsman fills a gap, and I think that's why the Ombudsman concept has grown so dramatically throughout the world. There was a need for some supervision of this vast number of boards that were doing what the courts used to do--resolving disputes. Since we are here and are doing that job I think it makes sense for this office to have jurisdiction over board types that do resolve disputes and make decisions that involve the citizens.

There were three categories used by Mr. Justice Morden in his very fine judgement. In his opinion, "the health disciplines board is a board as defined in 1(a) because, one, it is established by a provincial statute; two, its members are appointed by the Lieutenant Governor in Council; and, three, it discharges a provincially assumed regulatory responsibility in the course of which it is required to apply provincial law."

He then goes on to say, "These features are in themselves sufficient for the board to fall under section 1(a), but they are supported....," and he goes on.

I read those words to mean that we may have jurisdiction even though all three of them are not in existence. Clearly, if all three of them are in existence we do have it. There may be other things which could replace those and which would still give us jurisdiction. So I don't read them as all-inclusive and as meaning that you must fit under those for us to get jurisdiction. My philosophical view being that we should have jurisdiction over boards, I think it's important in reading that section not to limit myself by those three types.

I checked at noon hour after you had spoken to me about the condominium board. We have had no complaints from that board. Without doing an exhaustive survey--

Mr. Philip: From that board or on that board?

Hon. Mr. Morand: Against that board. Mr. Zacks, the head of our legal department, took a quick look at it and he thinks we probably do have jurisdiction. However, as I say, having had no complaints against it, we haven't done any study to see whether or not we do have jurisdiction.

We have considered the Housing and Urban Development Association of Canada, for instance, and we have come to the conclusion that we do not have jurisdiction over HUDAC. You mentioned some others. Are there others you would like to mention?

Mr. Philip: The other one that I believe you did do some work on, though, is the travel compensation board.

Hon. Mr. Morand: Yes. We have had some complaints on that, and we have done some work on that.

Mr. Philip: In your opinion then, Condominium Ontario does--?

Hon. Mr. Morand: Yes.



Mr. Philip: You would still have the power to investigate any government mismanagement, if you like, in the case of a board that would be dissolved?

Hon. Mr. Morand: You have got to be very careful in the use of your words here, and I have to be very careful. Government mismanagement, no; administrative mismanagement, yes.

Mr. Philip: Administrative mismanagement. Even though that body might be dissolved?

Hon. Mr. Morand: Yes. Anything it did during its course of office.

Mr. Philip: So it would be perfectly appropriate then, for this committee, perhaps, or even for a member of the Legislature, to refer you to the inquiry that was conducted into Condominium Ontario by the justice committee and ask you to investigate further. Would that be appropriate?

Hon. Mr. Morand: No. In the way you put it exactly, I would say no. We can't investigate what the justice committee did; we can only investigate what this condominium committee did.

Mr. Philip: Let me put it a different way then. Could you investigate the admissions that the former chairman of Condominium Ontario made to the justice committee when he appeared before it during its inquiry?

Hon. Mr. Morand: I don't know what his admissions were. If they were admissions of maladministration, we could.

Mr. Philip: His admissions were--and I will just take a second then--one, that he had hired staff without public advertising; two, that the minutes of this publicly funded body were kept secret from the press; three, that members of the board in fact underwent interrogation when the public found out what was going on on that board; four, that he had forced the resignation of a director who expressed opinions different from those of the government, plus a whole bunch of allegations concerning general sloppiness in the spending of funds. Would that fall under your jurisdiction?

Mr. Goodman: It depends--

Hon. Mr. Morand: I would say no to some those and yes to some of those. Mind you, that's a quick, off-the-cuff decision without looking at all of the facts.

Mr. Goodman: There must be a person affected in his personal capacity for the Ombudsman to have jurisdiction. If, to the satisfaction of the Ombudsman, no one is affected, then we don't have the authority even though there may have been maladministration. There must be a complaint made by a person affected or by a member on behalf of a person affected.

Mr. Philip: Surely someone wishing to gain information from a publicly funded body who could not obtain that information is in some way wronged. Surely anyone who might have expressed an interest in applying for a position, that position not being publicly advertised, is offended. Would that not be enough for you to conduct an inquiry?

Hon. Mr. Morand: Had that person applied for a job there?

Mr. Philip: How can you apply for a job that you don't know exists?

Hon. Mr. Morand: He might have applied for a job with them not knowing just what job existed. Clearly in that case we would have jurisdiction because he would have been affected.

Somebody nebulously from the public? I would want to think about that one. I don't like to give off-the-cuff decisions on things of that nature, because you can often be wrong, without sitting down and thinking them through. If he had had an application in for a job with them and they had then hired somebody without going through their proper procedures as set out then, I think we would have jurisdiction.

3:10 p.m.

Mr. Philip: Assuming that you did conduct such an investigation into the operations of this body, the government having decided, "What's \$670,000; it is spent, and what the hell?" and they are dissolving it, the advantage of such an investigation on your part would be surely the recommendations of how the government should proceed, should it start any other body of a similar nature, wouldn't it?

Hon. Mr. Morand: You keep using the word "government," and I keep refusing to talk about the government.

Mr. Philip: The administration.

Hon. Mr. Morand: The administration is a different story. That is a decision we have to sometimes consider in our office, and it is not an easy one to reach. Sometimes we have to come to a conclusion, is there any use in making this investigation? Should we be spending our time instead on some other investigation that can produce some result.

Certainly as a taxpayer and as everybody else does, I hate to see government waste--pardon me, administrative waste--in any area at all, but we do have to sometimes consider whether in this particular case--to use a colloquialism--we are spinning our wheels. When we get all through and we have spent a lot of time, is there anything we can do about it, or is there any recommendation we can make? Is there any good we can do? Remember always that our recommendation goes to the people we are investigating, with a copy to the people on whose behalf we have made a complaint.



Mr. Chairman: I would like to interject here because we are running over. Mr. Morand did indicate that he would have to leave by three o'clock. I assume we could always extend an invitation for you to return at some future point, if the committee members have no objections.

Hon. Mr. Morand: Unfortunately, I have an appointment for three o'clock this afternoon, not knowing that I was going to be on today. Otherwise, I wouldn't have made that appointment.

Mr. Chairman: Is the committee in agreement that if we feel the need for Mr. Morand to be present at some point, we will extend that invitation and let him leave now? Thank you very much.

Hon. Mr. Morand: Thank you very much. I am sorry that this happened, but I didn't know you would require me this afternoon.

Mr. Bell: Mr. Chairman, you just pointed out to me that Mr. Morand referred to Mr. Macerollo and the correctional report. I don't think we can say an awful lot except perhaps he could come forward and just confirm a couple of matters.

Members of the committee, again for your background, this is a report which I guess has been kicking around since 1977 or early 1978.

Mr. Macerollo: Actually it started in late 1975.

Mr. Bell: I am talking about the report itself. I think it was published in late 1977 or early 1978, and it was initially published as a report pursuant to section 22(3), being a report of the Ombudsman on the result of certain investigations and recommendations. The recommendations were quite extensive, as you have described in the last two days.

The process between your office and the ministry has been an extensive one, wherein they have responded to recommendations at one time numbering in excess of 100, and you have now boiled it down to four which were "outstanding." Mr. Morand reports those four probably are now considered by you to be appropriately implemented, meaning that you are going to wind this up very soon. Is that correct?

Mr. Goodman: Just before you answer, just a point of correction. The report was not published as a section 22 report. It was issued to the ministry by our office as a section 22 report and the ministry chose to make it public.

Mr. Bell: I stand corrected.

Mr. Goodman: I think that is important for committee members to understand.

Mr. Bell: In any event, your office is about to do something to wind this thing up. Is that correct, Mr. Macerollo?

Mr. Macerollo: My understanding is that the Ombudsman has accepted all the recommendations and responses as implemented by the Ministry of Correctional Services. In conferring with him recently on the report, he chose not to publish a further report in response to the report. If there were issues that the members here would like to discuss specifically that concerned them, by all means, we could raise those. But to go through every recommendation and implementation from beginning to end would take a considerable amount of time.

His position is that the recommendations are to his satisfaction. If there are specific areas the members are interested in, then those could be discussed either here or at some later date.

Mr. Bell: That is a shift in the onus. You have anticipated these questions correctly because one of the things that happened was that the Ombudsman and the then Minister of Correctional Services on a number of occasions undertook to provide the committee, and I think the Legislature generally, with a copy of the report if, as, and when it is completed. Do I take it now from your last comments that there has been a change in those plans?

Mr. Macerollo: There is no report, so to speak. There was a lot of communications between the deputy ministers, ministers and the Ombudsman. That correspondence is in our file.

Mr. Bell: Do you mean you are just going to let it sit that way, that there will be a series of interoffice memorandums dealing with each of the recommendations to which Ministry of Correctional Services has responded?

Mr. Macerollo: Right. The Ombudsman's position now is that the matters have been resolved to his satisfaction.

Mr. Bell: There will not be the usual procedure that your files enjoy at the end of the process where there is a closing file memorandum telling everybody what happened to it.

Mr. Macerollo: It will not be publicized.

Mr. Bell: Within your file?

Mr. Macerollo: It will be in the file; there is a closing to the file. But as far as publishing a separate document on all the recommendations, it would be laborious.

Mr. Bell: Stopping there for a moment, the committee, therefore, will have to decide whether it is interested in reviewing all the recommendations contained in the original report. If it is interested in pursuing any of them, it would then have to review those recommendations and seek specific information from your office as to any that were of interest.

Mr. Goodman: Mr. Chairman, I think there is perhaps a little bit of a misunderstanding. In the eighth report of the select committee--I refer to page 20, wherein the committee makes



reference to the Ministry of Correctional Services' report--the committee indicates in the final sentence of that paragraph that at that time, which is when the Ombudsman is in a position to issue such a report, et cetera, "The committee will seek from the Ombudsman and the Minister of Correctional Services a report on the disposition of all matters contained in the correctional report."

The difficulty we are faced with is that if the Ombudsman is satisfied that an adequate response is made to a section 22 report, he has no authority under the legislation, apart from his annual report, to report on the implementation of the recommendations. He has no authority to come before you and give you a report or to issue a report to the press. He lacks that authority. So it was my suggestion that you seek that information from the Ministry of Correctional Services. After all, they chose to make the report public. I doubt they would have any objection to making their implementation of the recommendations contained therein public as well. We do not have the authority to do so under our legislation, apart from the annual report.

Mr. Bell: Mr. Goodman, I am trying to understand what the present state of the bidding is. I think it is a little late in the game to start raising lack of authority because your office has participated in the arrangement or understanding or whatever you want to call it with the Minister of Correctional Services, the Legislature and this committee that at some time a report would be forthcoming.

I am trying to understand if that state of the bidding has changed. If it has, and I understand it has, Mr. Macerollo, if I read you correctly, the committee will have to decide if it is interested. If it is interested, it will then have to review each of the recommendations--which, by the way, you have in your archives documented and catalogued, members of the committee--and about which, if any, of those recommendations it wishes to speak to you about or know about specifically. Is that correct, Mr. Macerollo?

Mr. Goodman: It is not correct. As I have just indicated, if the committee is interested in seeing what steps have been taken to implement the recommendations, it should seek that information from the ministry.

Mr. Bell: That is not what Mr. Macerollo told us about five minutes ago.

3:20 p.m.

Mr. Goodman: We have maintained a consistent position, and I invite you to show me any time we have taken any inconsistent position. We have always taken the position that we do not have the authority to show you what steps have been taken in the event those recommendations are complied with to the Ombudsman's satisfaction. We just do not have the authority to do so other than in the annual report.

Mr. Bell: Because Mr. Morand has now decided, if I understand it correctly, not to prepare a report.

Mr. Goodman: Because the recommendations have been implemented. At the last time there were a number still outstanding. In the event the recommendations were not implemented to Mr. Morand's satisfaction, he would have to decide whether to proceed with the report to the Premier and to the Legislature.

Mr. Bell: If Mr. Morand decided, for whatever reason, that a description of the disposition of the so-called correctional report was appropriate for his next annual report, would he have the authority?

Mr. Goodman: Yes, absolutely.

Mr. Bell: All right. That is really what we are talking about. We are talking about a technicality right now.

Mr. Goodman: We are talking about a question of timing.

Mr. Bell: If this committee were to decide to recommend to the Legislature that in the next report the Ombudsman report on the results of the correctional report, you would not have the problem we are now talking about.

Mr. Goodman: Nor would the committee, with respect, have the problem if it asked the Ministry of Correctional Services, "What steps did you take to implement the Ombudsman's recommendations?"

Mr. Bell: Let me get an answer to my question first.

Mr. Goodman: No problem at all.

Mr. Bell: I hear what you are saying about the Minister of Correctional Services. If he wants to give us all the information we might otherwise get from your office, that might be a shortcut. I am trying to understand.

Mr. Goodman: You could get it now, rather than waiting for the Ombudsman's next annual report.

Mr. Bell: Mr. Macerollo, there were two categories of recommendations in that report.

Mr. Macerollo: That is correct.

Mr. Bell: Those which related to matters solely within the control of the Ministry of Correctional Services with respect to implementation, right?

Mr. Macerollo: I thought you were talking about there being two sets of recommendations, those which were specific to correctional facilities and general recommendations at the end of the report which governed the overall functioning of the ministry.

Mr. Bell: I think we are talking about the same thing. When the ministry responded to you initially, if I recall the matter correctly, he said, "There are some in the report"--and he named them--"wherein we have the control, fiscal and otherwise, to



implement your recommendations. There are those others which may be properly categorized as "administration of justice," which you will have to look to the Attorney General, Solicitor General, Government Services or anybody else for implementation." Are you with me now?

Mr. Macerollo: Yes.

Mr. Bell: I take it the first category, Correctional Services, has now been resolved.

Mr. Macerollo: That is correct.

Mr. Bell: What about the second category, the ones that--at least as indicated by the Ministry of Correctional Services--applied to other ministries?

Mr. Macerollo: In the Ombudsman's opinion, the ministry has done as much as it could to bring these matters to the attention of the other groups--cabinet, the Provincial Secretary for Justice--on matters which may assist, for example, in dealing with overcrowding in institutions. The ministry is a recipient of an offender and not in control of the situation prior to his becoming an offender.

Mr. Bell: With respect to that second category, the Ombudsman has no plans to take the matters up any further with those?

Mr. Macerollo: We followed it up in our correspondence recently with the ministry, and we have been advised again that this is something they pushed with the different members of the different committees. In some cases they have come to a dead end.

Mr. Bell: I do not think you are following what I am saying. Did Mr. Morand communicate with any of these other ministries that had control over some aspects of these other recommendations?

Mr. Macerollo: No.

Mr. Bell: All right. And he does not intend to do that any further?

Mr. Macerollo: No.

Mr. Bell: Members of the committee, I do not have anything further with Mr. Macerollo. It is up to you to decide whether you have a continuing interest in that Ministry of Correctional Services' report and its disposition and, if so, you heard from the Ombudsman's office what they believe the ground rules to be. To the extent that there is an interest in knowing what goes on, there are a couple of avenues suggested to you.

Mr. Philip: Surely the first step would be to contact the Ministry of Correctional Services immediately, would it not?

Mr. Shymko: I have a question, Mr. Chairman. It is my understanding that we were expecting a report to be tabled for this committee meeting. Is the onus on our committee now to request the Minister of Correctional Services to provide some kind of response to the Ombudsman so that a correctional report would be filed before us? I am not too clear on how you proceed. Is the onus on us, not on the Ombudsman's office?

Mr. Goodman: Mr. Chairman, the difficulty the last time was that there were still some recommendations outstanding, so we were not in a position to say at that time whether the Ombudsman would be proceeding with the report to the Premier and to the Legislature, be it a special report or a detailed summary as contained in the annual report.

Since the last time the select committee met the Ombudsman has satisfied himself that adequate steps have been taken to implement the recommendations. The Ombudsman does not have the authority to make a report other than that which the Legislature has given them. Where a minister or governmental organization has implemented recommendations to the Ombudsman's satisfaction, he is limited to reporting on that in his annual report.

Since the ministry has made the report public, as I said, I do not believe you would have any problem with the ministry coming before you and indicating what steps it has taken on the recommendations that you are interested in.

Mr. Macerollo: I may just add something. This is an unusual report on the basis that it wasn't a complaint that we received. If there was a complainant in this case, then chances are a report would have gone to that person and what happened with the recommendations.

Mr. Maloney, in his wisdom, in 1975 decided to investigate on his own motion an article which appeared in the paper. There was never a complainant per se, so there was no one who received a report and the details of the recommendations that were made as a result of being personally affected by the complaint.

Mr. Shymko: I just simply find it rather unusual that this matter is stressed in the committee's response to the eighth report that there should be some indication, at least on paper, in the event that there should be final disposition of this matter. My understanding would be that a report, at least a one-page report or something, should have been given to the select committee rather than to simply say, "The ministry has filed a report. We have no problem; therefore, we will not report anything to you."

Was a correctional report tabled in the Legislature?

Mr. Bell: Yes, it was.

Mr. Shymko: When was it tabled?

Mr. Bell: I believe November 1977, but I do not think the time is appropriate. Mr. Goodman is correct. The cost thereof



was undertaken by the ministry. Mr. Drea, minister at the time, for good and sufficient reason wished the report to be public, for discussion or otherwise. It was an extraordinary undertaking by the Ombudsman's office. Somebody could do a PhD on the follow-up of that report because certain aspects of it follow amending legislation, regulations and other procedures.

That is one of the reasons why this committee on a continuing basis has had an interest in that, because the committee perceived the impact and the effectiveness of the report and wanted to ensure the process was carried to completion and that the report--speaking from the Ombudsman's point of view--was given due consideration and action by the ministry in question.

If I can just cut in, I would like to put something to rest for a moment. I am just going to give the committee some background and I think you can then pick up what is appropriate.

3:30 p.m.

The committee's fifth report of November 1978, page 40, contained the following:

"On June 12, 1978, the Minister of Correctional Services addressed the ministry's response to the recommendations contained in the Ombudsman's report"--that is, the report initially published--"on adult correctional institutions. The minister tabled this document during his ministry's estimates debates on June 14, 1978. The Ombudsman is currently considering the response and is expected to issue a statement thereon in accordance with section 22(4) of the Ombudsman Act by early fall."

Just stopping there, the process referenced by that paragraph is the one that has just been finalized now, as reported by Mr. Macerollo and Hon. Mr. Morand--and I am not imputing anything as to the time it has taken, because anybody who has been privy to the depth and volume of that report would appreciate that it would take two and a half or three years for completion.

Section 22(4) is the process whereby the Ombudsman, when he receives a response from a governmental organization to one of his reports, as the minister did here, and considers that to be an adequate and/or appropriate response, through the vehicle and the process referenced here, he so indicates to the Legislature and to this committee in some way which he is permitted to do so by law.

The paragraph goes on further to say: "Both the Ombudsman and the ministry"--speaking of their attendances before this committee--"reconfirmed that when the Ombudsman process has been completed in respect of this report, the report, the ministry's response and the Ombudsman's decision in respect thereto, pursuant to section 22(4) of the Ombudsman Act, would be properly before the committee for consideration as it deemed necessary and appropriate. Accordingly, the committee defers any further discussion of this matter until the Ombudsman's process has been completed."

Mr. Shymko: As who deemed appropriate? As the committee deemed appropriate?

Mr. Bell: It would be the committee.

The seventh report of this committee, September 1979, contains the following on page 24: "The Ombudsman on July 17, 1979, received from the Minister of Correctional Services the ministry's response to the correctional report"--the one referenced in the fifth report. "The Ombudsman is now considering the response before preparing and submitting his final report on this matter to the Legislature. At such time as the Ombudsman's final report is received, the committee will consider the matter as may be appropriate and necessary in the circumstances."

I do not recall, members of the committee, before today any discussion that there would not be a report. Maybe I am using report in an overly restrictive sense and not in a generic sense, but there was never any indication from the Ombudsman or his office before today that there wouldn't be something provided to the Legislature and this committee summarizing the results of the process. The fifth report even goes into it in more detail. So that is your background. Mr. Goodman and Mr. Macerollo might have something they wish to add by way of explanation.

Mr. Shymko: I simply want to add, Mr. Chairman, that I am totally surprised that there is nothing before us. I expected and I think most members of the committee expected some form of a statement from the Ombudsman's office. I think it is only proper, being new to this committee, just being aware of what the earlier correctional report was. It means that we would have to go back and do a lot of reading on this apparently huge voluminous study.

I would appreciate if perhaps we could communicate to the Ombudsman that had we known this I guess we would have stated it in his presence.

Mr. Goodman: Mr. Shymko, to be fair, it is not the case that there is nothing before you. The Ombudsman was aware of the select committee's concern and included two pages in his annual report in response to the select committee's concern. I invite you to turn to pages eight and nine, wherein he referenced the outstanding recommendations by number and the steps the ministry had taken to implement them. That is the report that is before you. That is the report the Ombudsman has chosen to make.

The difficulty is that the Ombudsman is given no authority in the legislation to report to the Legislature, never mind the select committee, other than that which the Legislature has given in the act. The Ombudsman has chosen in his annual report, because this was not a recommendation denied case, to bring you up to date in the best manner that he saw fit in his annual report. As I say, I do not believe you should have any problem with the ministry in disclosing specifically on each item what steps they took to implement the recommendations.

Mr. Shymko: It is simply, Mr. Chairman, by reading the select committee's report you get the impression that there would have been a separate correctional report in addition to the Ombudsman's report.



Mr. Goodman: As a little background information, Mr. Shymko, there were a number of letters--Mr. Bell referenced some of them--that were made public by the Ministry of Correctional Services, either before this committee or at other committees of the Legislature, with respect to the steps that they took to implement the recommendation. So it is not that they disclosed nothing until this time. Many of the steps have been made public.

Mr. Bell: All right. Mr. Goodman, so there is no misunderstanding, for the record, the text at page eight and following on page nine of the report is intended by Mr. Morand to be the documentation provided to the Legislature and to this committee as referenced by the excerpts from the previous committee reports that I have read. Is that correct?

Mr. Goodman: Yes, that is my understanding.

Mr. Bell: All right.

Mr. Chairman: How does the committee feel about that? Are there any further comments?

Mr. Shymko: We have little choice.

Mr. Bell: The committee might wish to deliberate this at some time when your report is being deliberated. Speaking for myself, both the letter and the spirit of the text of your previous reports, where you record what your understanding is of the situation and you record assurances by both the Ombudsman's office and the ministry, have not been met. It may be a breakdown in communications or it may very well be that Mr. Morand has a good and sufficient reason for not reporting in this way.

Mr. Goodman: Again, it depends Mr. Chairman, on how you view the word "report." I think Mr. Bell is fair. Are we talking about a report to the Legislature pursuant to section 22? Or are we talking about a report on the present status of the outstanding recommendations?

Mr. Bell: All right, but this thing in pages eight and nine is a report. We both agree to that. Is that right? In your annual report you have reported on correctional services.

Mr. Goodman: That is right, but it is not a report pursuant to section 22 of the Ombudsman Act.

Mr. Bell: Fine, but we have a report within your annual report. We are really only talking about detail are we not?

Mr. Goodman: Exactly.

Mr. Bell: Speaking for myself, it would be of much more assistance to the members of the committee to know not just what the details were of the four outstanding recommendations at the time but what happened to all of them. Mr. Macerollo, maybe it is considered by you and your staff to be more of an undertaking than you wish to embark upon at this time. I am quite surprised that you are not intending upon consolidating the results, but you may have good reasons for doing that.

Mr. Macerollo: Again, I asked the Ombudsman what he wished to do. This is the form he wished to take.

Mr. Bell: Okay, that is fine.

Mr. Chairman: I wonder if you could relay our concerns to the Ombudsman and get back to the committee some time early next week if possible.

3:40 p.m.

Mr. Bell: Mr. Chairman, next, under the heading of statistical analysis which you see in your schedule and on the agenda, you have before you, with Mr. Goodman, Mr. Keith Bottin. Mr. Bottin, I am forever forgetting your exact title. Could you state it into the record?

Mr. Bottin: Yes, I am the co-ordinator of systems development. It may be the longest title in the office.

Mr. Bell: It is by no means the least responsible and the least important function in the office because, as you will see in a very short while, Mr. Bottin is the person in many respects responsible for co-ordinating the data storage and the use to which the data is put by the Ombudsman's office. Also, he now has something to do with word processing, I understand, which he is going to tell you about later.

You have available today, Mr. Bottin, some material, some of which I asked you to prepare, some of which you anticipated some areas the committee might be dealing with. Has that been distributed to the clerk?

Mr. Bottin: Mr. Chairman, I understand it has not been distributed in its entirety. I agreed with Mr. White that we distribute the statistical information first with a view to getting that area covered as much as possible today and, as time allows, deal with the second group of material which outlines some of the new systems that are coming into place in the office in the near term.

Mr. Bell: I think you are going to have to come back tomorrow to do service to the statistical end of it. The only thing I am wondering is whether, in the time remaining, we deal with the information procedural matters and leave the statistics to tomorrow morning when we all have had an opportunity of reviewing the material and are fresher than we are right now.

Mr. Bottin: Conceptually, Mr. Chairman, speaking to areas such as the average duration of closing, the introduction of the no-follow-up procedure, new systems to keep track of our cases as they move over time, it really flows out of your concerns as to the numbers expressed in your ninth report that it would be better to work from the numbers to the other documents and attempt to understand new systems that are coming into place in the context of old numbers. It is the wrong way to go, I think.



Mr. Bell: Can we have that material distributed to members of the committee now, or do you all have it? Are you referring to the Ombudsman's statistical synopsis and statistical comparison?

Mr. Bottin: That is correct. In conjunction with that, I asked Mr. White to circulate a document which has been circulated to the committee in previous sessions, namely, the procedure for documenting no-follow-up complaints as it was originally promulgated on October 10, 1978. That procedure, of course, did not cover every directorate in the office by any means. Subsequently, as of July 16, 1980, we expanded that procedure into a high volume complaint area, namely, the correctional and psychiatric services --CAPS--directorate, specifically as it might relate to the corrections complaints.

Mr. Bell: Can you hold up there for a moment? I want to make sure that all committee members have all the material before them. I think we better give these things some designations by alphabet. We will call your statistical synopsis A, and we will call your July 16 memorandum B.

Mr. Bottin: Fine. That is the most recent.

Mr. Bell: Shall we then call your October 10, 1978, memorandum C?

Mr. Bottin: Fine. There is one other document. It is the complaint summary form that you can call D. That has just come down. I am not sure whether that is with every member of the committee at this point. It should be up at the front desk, though.

Mr. Bell: See how much we depend on Mr. White? I do not see that either.

Mr. Bottin: It is a blank form.

Mr. Bell: When we get that we will give it a D designation. I next have a flow chart entitled, Flow Chart In Progress System.

Mr. Bottin: That is correct.

Mr. Bell: Do the members of the committee have that?

Mr. Bottin: No. That was part of the second group of material that I agreed Mr. White would hand out later.

Mr. Bell: Let us stop now then.

Mr. Barlow: Can you back up? Can you start again?

Mr. Bell: A is the statistical synopsis. It is a four or five-page sheet showing comparative statistics for this fiscal year and the previous fiscal year. B is a memorandum dated July 16, 1980, a utilization of the no-follow-up procedure. It is too bad we have to spend time on the record for this, but in any event C is a memorandum dated October 10, 1978, entitled Procedures for

Documenting Straightforward, Nonjurisdictional, et cetera; D is the document which none of us has as yet, the complaint summary. It is an interesting and valuable document to have. It will give you a good insight as to the procedures of the office.

We are going to deal with three areas, Mr. Bottin, I will alert you right now. As a matter of fact, I think I am going to usurp your suggestion. I am going to go to a third category between now and 4:30. I want to start statistics fresh tomorrow morning because there is going to be a lot of cross-referencing with statistics, et cetera, and I do not think it is fair to you or the members of the committee to dive into it right now. We are going to deal with the matter of the statistics on a comparative with the four categories of documents we now have.

We are going to deal with your word processing, represented by the second category of documents which you have provided me and which the committee members will obtain copies of shortly. The third category of documents and the third subject we will be dealing with is represented by the two sheets that Hon. Mr. Morand distributed at the opening of his comments, the breakdown of the investigative complement of your staff.

Mr. Bottin: Mr. Chairman, I might suggest at this point that that particular document was not generated by myself. It was generated by a staff member who is our personnel officer. I think you would be far better off if Mr. Allan Mills, our controller, or the staff member who generated the document spoke to how that information was collected and so on. It is outside my realm.

Mr. Bell: I am not interested in how it was collected.

Mr. Bottin: Or even to interpret the numbers.

Mr. Bell: Just hear me out and then you can tell me whether you are the best person or not.

As I indicated to you earlier, some--I would venture to say all--members of the committee, with the benefit of this statistical information, would be interested in knowing for the periods referenced, for the years referenced really, the total numbers of in-progress files that your office had with as much breakdown as possible by department. That is something that is within your bailiwick and you could provide that, not this afternoon, but perhaps as early as tomorrow morning.

Mr. Bottin: Mr. Chairman, the difficulty I have with the information that is presented in making that coincidental with my information is that the office, on the complaint side, has inventoried its in-progress count at two six-month points in the year, March 31 and September 30 of each year. None of the data which you have in front of you on the staffing side coincides with those dates. No other inventories were taken office-wide such that I would have no numbers that would coincide with those dates.

The new in-progress system, which is part of the documentation in group two that we have referenced, speaks to the



ongoing collection of this kind of information. But since the system is yet to be implemented I have a problem with it, making it coincidental. I can speak to the beginning and middle of the fiscal years covered by those dates. I cannot speak to the point in time, December 31, namely, that is shown on this chart.

Mr. Bell: I am now glad I am raising this with you this afternoon because we may be in an apples-oranges situation. Is it possible--maybe Mr. Mills can answer this, or Mr. Goodman--to give us the numbers of investigative staff for fiscal year endings as opposed to calendar year endings?

Mr. Mills: Yes, Mr. Chairman, that is possible.

Mr. Bell: Would it be possible to do that by tomorrow morning?

Mr. Mills: If you would be satisfied with figures at March 31, the end of the fiscal year, I would say yes.

3:50 p.m.

Mr. Bell: Members of the committee, if you have this sheet in hand you will see what I am getting at. The Ombudsman's fiscal year is the government's fiscal year--it happens to be my law firm's fiscal year. The figures given to you on this sheet are reported on the calendar fiscal year. It is not going to be terribly meaningful to you to find out, for example, that on March 31, 1978, they had 2,000 in-progress files because there is a three-month disparity between the December 31, 1977, figures, or there is a nine-month disparity if you look forward.

So for tomorrow morning, Mr. Mills, could we have these figures broken down to all the fiscal year ends that the office has had? The first one would be what, March 31, 1976?

Mr. Mills: Yes.

Mr. Bell: Which is less than a full fiscal year but, nevertheless, a good starting point right through fiscal year 1981.

Mr. Mills: Yes.

Mr. Bell: Mr. Bottin, could you then give us for the same time period the number of in-progress files with as much breakdown as you can collate and produce between now and tomorrow morning?

Mr. Bottin: Right, coincidental with that date--fiscal year end.

Mr. Bell: That is right, so we are all talking about the same thing and in the same time frame.

Mr. Bottin: Mr. Bell, it might be helpful to Mr. Mills to perhaps give Mr. Mills an indication, since it is item number three, approximately what time do you envision it taking to get through items one and two, so that Mr. Mills and his staff would have an opportunity to put these numbers together for you and have them typed and so on.

Mr. Bell: I would think with the time remaining this afternoon we will start the first statistical analysis. I think you can give the committee a good overview and some description as to these catchwords that are not familiar to many of them this afternoon. I would think by 11 o'clock we would be ready to get into this.

Mr. Philip: Mr. Chairman, there is some information that I was asking for earlier in which I do not think the statistics file will lead to any kind of meaningful comparison. What I was asking Mr. Morand for was if you, in fact, had figures whereby we could compare--for want of a better word--the Maloney years with the present Ombudsman. Comparing 1979-80 and 1980-81 will not give us a very meaningful comparison, will it?

Mr. Bottin: Mr. Chairman, the point that the member has raised is a good one. Fortunately, the terminology that was used for the statistics, beginning with our first report through to the current one, is roughly uniform. Now there has been the introduction of new procedures such as no-follow-up complaints that were in previous years called "informal inquiries," if you will recall--a few changes in terminology like that. But as to complaint disposition, referencing section 18 cases, for instance, where the Ombudsman has refused to investigate or further investigate, numbers like that are readily comparable. They are consistent as to their meaning in the act. They are consistent as to the meaning as they were presented in the statistics in the annual report.

Unfortunately, in the context of your question, we decided to put somewhat less statistical information in our more recent annual reports, so that I would in some cases have to go back to my staff and ferret through some printout or have computer work done that we would otherwise normally have done in order to get you precisely on point as to comparable numbers. But I will endeavour to do that as you raise your questions.

Mr. Goodman: The only substantial difference, Mr. Philip, is in file openings and closings because, as you have already heard, we have introduced a procedure, first of all, in all directorates apart from the correctional and psychiatric services directorate where, if a matter could be dealt with quickly, be it jurisdictional or nonjurisdictional, a file wouldn't be opened.

Needless to say, in the earlier years in all those matters a file would have been opened and closed. That is a substantial change, subject to telephone interview situations.

Mr. Philip: We could compare the correctional files then from one administration, if you want, to the other.

Mr. Bottin: You would see dramatic swings in the numbers and the volume of closings. Some of those swings would be as a result of the changes in the intake as we compare no-follow-up to file and so on.

Mr. Philip: If we can get the statistics, then we can ask the questions as to why they are the way they are. That is what I am asking for.



Mr. Bottin: Fine. What I will endeavour to do then for tomorrow is have a copy of every previous annual report and do my best to reference through the previous seven if that is necessary.

Mr. Philip: Wait a minute. I am not sure that all that is necessary. I think if we can take two sample--

Mr. Bell: I am not so sure it is necessary either. Mr. Philip, if I understood your question of Mr. Morand before, you were interested in seeing--broken down, I think, by categories or by agencies--the type of cases that are not resolved or have not been taken to completion. Am I correct?

Mr. Philip: Yes.

Mr. Bell: Mr. Bottin, page four of this sheet contains, for the two fiscal years before us today, the number of cases not resolved. Correct?

Mr. Bottin: That's correct.

Mr. Bell: Do you have on the machine right now the means to break those down?

Mr. Bottin: By organizational grouping or organization names?

Mr. Bell: Yes.

Mr. Bottin: Yes.

Mr. Bell: So you could do that relatively quickly?

Mr. Bottin: Yes. Over what time periods?

Mr. Bell: For the years referenced.

Mr. Bottin: Okay.

Mr. Bell: For the previous fiscal years or the previous reporting periods, do you also have that information?

Mr. Bottin: Yes.

Mr. Bell: Broken down again?

Mr. Bottin: Yes.

Mr. Bell: Then, Mr. Philip, I would think that is all we would need under the not resolved category for all of the prior reporting periods, broken down by categories. If we could have that, however you want to set it up, I will leave it to you.

Mr. Bottin: Mr. Chairman, I will forewarn you of one point which is specific to interpreting the numbers, and that is that our first report covered 13 months, our second report covered nine months, our third report covered six months, two subsequent reports covered six-month periods and then we went to fiscal year reporting. So my data bases, to use that terminology, are set up on that basis.

Mr. Philip: That really poses no problem because all the members of the committee can add and subtract and divide.

Mr. Bottin: Or develop yearly averages.

Mr. Bell: Wait a minute. Do you have yearly averages on your machine?

Mr. Bottin: Not as such, but they can be derived and made specific to calendar years or fiscal years, if that is required.

Mr. Philip: That would be easier.

Mr. Boudria: You will indicate in that little report that you are bringing to us tomorrow morning just how long each one of those periods are?

Mr. Bottin: Yes. You could divide the number of months through and have a monthly average out of that. I can do that for you.

Mr. Bell: Keith, how much of an exercise is it between now and tomorrow morning to put averages to those periods that are less than 12 months?

Mr. Bottin: If you take a look at the complaints by organization segment of the eighth report, it is a lengthy listing of organizational grouping. If you want an average beside each one for every time period, that will take some time. We can go to major groupings, such as governmental organizations, other Ontario government organizations, the private sector, the municipal sector and that kind of thing, and then we are working with five or six major segments to the organizational listing.

Mr. Goodman: May I suggest that we start off with those categories first and, depending on what figures they spit off, we may ask you to break them down further. Mr. Philip indicated an interest in knowing what the Workmen's Compensation Board percentages were, as an example.

Mr. Cooke: We will also have to get (inaudible). We will be comparing different fiscal years or different annual reports, the total case load of that year.

Mr. Bell: You will get that.

Mr. Cooke: Obviously, the work load has gone up. We want to know the percentage of the total of how many cases have been unresolved.

Mr. Bell: You will have that. As soon as you have a percentage, you will know.

Mr. Cooke:: We are not just getting raw statistics.



Mr. Bottin: No. What I will be giving you at this point will be what is reflected by way of what we have completed work on and closed, exclusive of these no follow-up, nonjurisdictional complaints and information requests which, of course, are not resolvable almost by definition.

Mr. Bell: Is there any question now about what additional information we have asked you for?

Mr. Bottin: No, and if the format doesn't quite suit you, we can generate another one to meet some further needs.

Mr. Bell: I know you will make your very best effort, but if it is not all ready by 10 o'clock, I will certainly understand. I am sure we will be ready to go with something by 10.

Now, Mr. Bottin, back to the document labelled A. I think it would be a worthwhile exercise for members of the committee if, in a general way or by way of introduction, you would take them through these various categories of descriptions, particularly the first two pages, and give them an explanation of what is meant, for example, by favour complainant, favour governmental organization, no follow-up complaint and information requests and getting on to the disposition summary. There are some dispositions that would require some further explanation.

4 p.m.

Mr. Bottin: I will also offer, Mr. Chairman, to present to the committee a document that we are using as an analytical document. It will provide you with a clear English language statement of what each of these words means as we analyse our cases. I failed to do that today. I can have that for you tomorrow.

Mr. Bell: We have every confidence in your ability to speak English.

Mr. Bottin: Sometimes the terminology, as labelled, does not really offer you much. Those definitions would offer you more.

Mr. Bell: I am not interested right now in a comparative study of the statistics. They speak for themselves. After the committee members get this briefing under their belt and start fresh tomorrow morning, I think we will be able to tackle them more meaningfully. Why do you not carry on? I will have a coffee.

Mr. Bottin: The statistical synopsis document, you will notice, is structured in a way where it has a line at the midpoint, roughly, of page one and at the midpoint of the text on page two. I had that line put in for a reason; it segments the information in a way that makes it somewhat more understandable than perhaps our previous documents before the committee. The first segment speaks to those matters handled by the office that were handled in the course of opening a file, closing a file, and offers figures as to the number of files in progress at specific points in time.

The complaint information which follows relates to complaints flowing out of--and this is critical--the closing of files. You might notice, for instance, that the number of files closed in total--if we go to another page of the material, namely page three--is always less than the number of complaints. That is natural, of course, because a person or complainant can offer to our office more than one complaint simultaneously. He will list three allegations perhaps, so that in the closing of that file, there will be three allegations dealt with. One of them might be a supported case, another one might be a nonjurisdictional complaint and a third one might be a situation where it was abandoned, or withdrawn, just by way of example.

It is critical to understand that difference because sometimes there is a tendency to equate the two. You always have to view the situation as being one where there are more complaints than there are files. In addition to that, there is another stream of complaint work in the office that we have outlined through our no-follow-up procedure and the documents which accompany that.

Mr. Bell: Before you get to that, let's stop for a moment. Do I understand you correctly that, for example, fiscal year 1980-81, files closed 5,083, the statistics under complaints flow from that number?

Mr. Bottin: That is correct.

Mr. Bell: It does not include all of that number because you have not closed them all?

Mr. Bottin: No, that is not correct. What has not been closed is reflected as 1,634, and the information which flows below-- It might help the committee to note "closed complaints"; in other words, put "closed" over "complaints."

Mr. Bell: One does not add that column at the right for obvious reasons because some of the numbers are under more than one category.

Mr. Bottin: Keep in mind that the first two pages are really the synopsis. The following two pages offer much more detail as to the specific disposition of classes of cases. You get numbers repeating themselves, like 6,182, totalled with respect to whether or not we had jurisdiction and so on, going on from there.

Mr. Bell: This is to be distinguished from the information that you are going to give us tomorrow as breaking down the in-progress files.

Mr. Bottin: No. I thought the request, as I understand it at least, was as it pertains to matters which have been closed and, recognizing that you want it by organization, what was the disposition of those matters not resolved. That flows again to matters which are set out in more detail on page three.

Mr. Bell: No, I am sorry, I was not referring to that. Mr. Bottin. I was referring to this sheet Mr. Morand gave us earlier--



Mr. Bottin: As to staffing.

Mr. Bell:--that you are going to go back to show us what is in progress. You are going to break that down, I think, aren't you?

Mr. Bottin: Yes.

Mr. Bell: All right. Go on to the second category of matter that your office deals with.

Mr. Bottin: The first stream of complaints, if you want to look at files of complaints, is one segment of our complaint work. There is another segment of our complaint work that we described as "no follow-ups." There are two documents before you: documents B and C. Document C describes the general procedure as it was implemented in the office; document B describes what has been implemented subsequently in the correctional and psychiatric services directorate. I will speak to numbers flowing out of that implementation later in my presentation.

The critical thing to remember is that we are only talking about matters where we are face to face with the complainant or on the telephone with him, interviewing him, passing on a nonjurisdictional referral, or answering his information request and subsequently confirming with him that he requires no information so that we do not have to set up a file. The location of this type of transaction with the complainant can be at a hearing, at a visit to an Indian community, on a telephone inquiry in the office or a visit to a correctional facility, as the new procedure allows for. The common element in it all is that there is an interview that takes place with the complainant. It's that immediacy which allows this procedure to be workable, in our view, on the service end of things.

Also, of course, a jurisdictional matter would never be handled this way. There are no jurisdictional complaints flowing out of the no-follow-up work.

Mr. Bell: Do you have at hand, first, the no-follow-up procedures, as expanded to correctional and psychiatric, that were instituted during fiscal year 1981?

Mr. Bottin: 1980-81. That is correct.

Mr. Bell: Covered by this report?

Mr. Bottin: Yes.

Mr. Bell: Do you know at day one of implementation the number of matters that represented?

Mr. Bottin: You are speaking of the CAPS directorate?

Mr. Bell: Yes. Let me tell you where I'm going. On a comparative basis--I promised I wouldn't do it, but I guess I lied--one would expect, and I think we understood, that introduction of this procedure with CAPS did two things. It took a

lot of files out of your stream that had relatively short durations. Therefore, your number of in-progress files dropped, or your numbers of files closed dropped. But it also increased the number of no-follow-up complaints.

Mr. Bottin: The number of files opened dropped. The number of files closed has gone up.

Mr. Bell: I'm sorry. The number of files closed went up, and you have reported that as one of the reasons. But it also increased the number of no-follow-up complaints and information requests.

Mr. Bottin: Not in overall office terms, only specific to that directorate. That's something I would like to get at today or tomorrow.

Mr. Bell: You could probably save it for tomorrow. What I'm saying is that you had 400 less on an annual basis, but you have expanded your procedures.

Mr. Bottin: That's right.

Mr. Bell: What's the reason?

Mr. Bottin: There are other factors. They are referenced, beginning with number one in terms of the scale of our private hearings, recognizing that some of the matters dealt with at private hearings, about a 50-50 split, would be file openings or no-follow-ups, and the general decline in intake to the office because of public perception as to our jurisdiction and so on.

I can very quickly give you the numbers that Mr. Bell was directing his question to: 71 in 1979-80 and 740 in the last half of last year. And we are anticipating for this current year in CAPS 1,764 where there will not be files made.

Mr. Bell: You had 1,764 no-follow-up complaints or information requests?

Mr. Bottin: Dealt with in the straightforward manner that is allowed for under the no-follow-up procedure. Keep in mind again, if you had an opportunity on your tour of the office to see the new word processing equipment and so on, that we don't type documents in conjunction with the closing of no-follow-ups as a rule. We might in the odd instance. We are saving on the administrative support side in that respect, and it's an important saving for the office.

Mr. Goodman: I think it's important for the committee members--I know, Mr. Bell, you do know this--that the correctional complaints are the largest single source of complaints to the Ombudsman. By introducing a no-follow-up procedure for correction complaints we have introduced a substantial saving in time and money. We don't open files on most of these matters. You can see the tremendous numbers that come in.



4:10 p.m.

Mr. Bottin: Further to Mr. Goodman's point, if the committee examines the total jurisdictional correctional files or complaints closed in fiscal year 1979-80 and 1980-81 there is quite an improvement, or quite a larger number in the more recent year. It's my view that the efficiencies arising out of the simple documentation scheme that's set up for the straightforward matters has allowed our investigative staff and that directorate to handle more efficiently what was at that time an onerous backlog of jurisdictional in-progress files.

Mr. Bell: It bears repeating that that has also kicked the pants out of your duration this year.

Mr. Bottin: Well, yes, but those numbers are not as easily compared from year to year as perhaps some of us would like. The more important thing is to look at the output end of things, namely, the number of jurisdictional file complaints closed and the course of files out of the CAPS directorate that allowed their in-progress figure to drop so dramatically while at the same time closing many more jurisdictional complaints on a fiscal-year comparison basis. If you take a look at the organizational table in the eighth report and compare it with the seventh, you will see the change in numbers, and very quickly. The same kind of change has occurred in special services, but for somewhat different reasons, namely, the reallocation of staff and the hiring of additional staff, as Mr. Morand has indicated.

In fiscal year 1979-80 there were 1,134 jurisdictional correctional complaints handled. In this fiscal year, the one covered by the eighth report, that figure is 1,611. As a general rule the number of complaints exceeds the number of files across the office by 10 or 12 per cent, so you can appreciate that that's a significant improvement. There is a corresponding decrease in the number of in-progress files in that directorate as a result of that output.

Mr. Bell: Mr. Bottin, the change with the CAPS, putting them on stream with respect to the office procedures, brings everybody on stream. Is that correct?

Mr. Bottin: There's one other area that we have looked at as a possibility for further expanding the no-follow-up procedure, but there are some difficulties with it, and it's a very practical consideration that seems to prevent us from employing it in that area. For instance, the application of it in CAPS is administered conveniently simply because, of course, we interview all these complainants within a period of a few weeks, they having written our office first. The common element in all of this is the interview, as I pointed out earlier.

Unfortunately, for instance, with letters received from private citizens outside correctional facilities or other institutions who may have a nonjurisdictional complaint involving, let's suppose, the federal government, if we attempted to interview them we would most likely attempt to do it by phone, speaking across the province. If we try to do that what we would

find, as I have been advised by the head of the research department in the legal directorate, is that it would be awkward to find these people. They may be at work; we may be talking to the wife of the complainant--all sorts of difficulties. It seems that the more convenient thing to do, recognizing that we have got an organized, documented system for our referral information, is simply to generate efficiently a letter to that complainant.

Mr. Bell: Without a file?

Mr. Bottin: No, with a file, because if there is an outgoing letter from our office there is a file. That's another aspect.

Mr. Bell: What is the procedure now?

Mr. Bottin: That is the procedure.

Mr. Bell: That you open a file.

Mr. Bottin: Yes, in that instance.

Mr. Bell: Send a letter and then close the file?

Mr. Bottin: Yes. So those matters still fall within the file closing--complaints flowing out of that, and so on.

Mr. Bell: I'm not concerned. Each of your departments now, directorates, that are responsible for investigating matters within your office uses the no-follow-up procedure. Am I correct?

Mr. Bottin: In the past you could almost say that, but as it stands right now, because basically our investigative staff does not go on hearings any more, the directorate of special services and the directorate of general investigations do not use the procedure, because as it presently stands they are not handling nonjurisdictional matters. I think Linda will back me up on that.

Mr. Bell: Because there is no reason for them to use it.

Mr. Bottin: They are not presented with the situation.

Mr. Bell: They are later on in the system.

Mr. Bottin: That is correct.

Mr. Bell: Unless somebody has committed a fundamental error, there is no need for it. Hereafter, the next fiscal period, when we examine the statistics in respect of durations, we are going to have the purest statistic we have ever had as to how long it takes your office to process a classic case. Is that correct?

Mr. Bottin: I say that subject to the remark I made earlier, which is that we are still handling straightforward, nonjurisdictional situations by way of file openings, but we can segment that out by jurisdiction. I can always get to the pure figure.



Mr. Bell: But it is to your advantage to keep it in right now because it is keeping your duration low.

Mr. Bottin: Not really, Mr. Bell. You are aware that I can always segregate out and give you a duration figure based on, or coincidental with, the jurisdiction of the complaint. I can always isolate the more difficult one.

Mr. Bell: Can you give us that one tomorrow as well?

Mr. Bottin: I have it right now.

Mr. Bell: Can you give us average duration to closing?

Mr. Bottin: For jurisdictional complaints?

Mr. Bell: That 207-day figure applies to all of the items found at pages three and four. Is that correct, Mr. Bottin?

Mr. Bottin: Yes.

Mr. Bell: Or pages three and four and a half, because the last statistic being the average duration to closing days is 207. That 207 applies to everything up?

Mr. Bottin: Yes. I can offer right now that the average duration to closing for a jurisdictional complaint in 1979-80 was 420 days.

Mr. Bell: While you are there, can you go down the categories on pages three and four, if you have that information?

Mr. Bottin: And offer it at each point along the way?

Mr. Bell: Yes. Jurisdictional complaints--

Mr. Bottin: I do not have that information.

Mr. Bell: --you have given us 420.

Mr. Bottin: At the moment, I have it only specific to jurisdictional complaints.

Mr. Bell: Not outside jurisdictional?

Mr. Bottin: No, but I have that information in the office.

Mr. Bell: For the other three, outside, not determined, information request submissions?

Mr. Bottin: Yes. I can have that tomorrow.

Mr. Bell: Obviously, the next three categories are going to be less than the first one unless-- I do not know how weighted that average is.

Mr. Bottin: Yes, but it is 420 days, 7,980 for within jurisdiction complaints; 484, fiscal year 1980-81, for within jurisdiction complaints.

Mr. Bell: Mr. Chairman, I am going to suggest that now is an appropriate time to break. I think we would all be better served if we let Mr. Bottin and his colleagues obtain that additional information and we will start at it first thing in the morning. I apologize, Mr. Bottin, for your need to come back but, as usual, my schedules are out the window the first two hours.

Members of the committee, we still have lots of flexibility in that schedule you have. I am not concerned that we will be behind by the close of tomorrow.

Mr. Philip: Can we assume that the room will be locked and, therefore, all documents can be left here?

Mr. Chairman: That is my understanding, yes.

The committee adjourned at 4:20 p.m.





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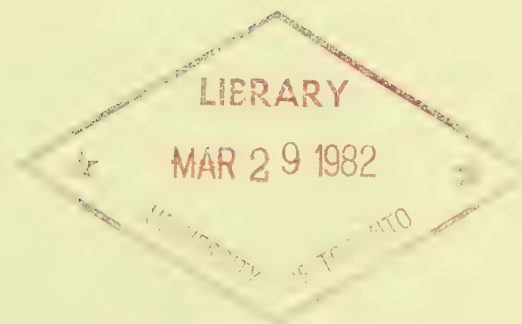
OM-3

SELECT COMMITTEE ON THE OMBUDSMAN

OMBUDSMAN'S EIGHTH REPORT

THURSDAY, SEPTEMBER 10, 1981

Morning sitting





SELECT COMMITTEE ON THE OMBUDSMAN

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Clerk: White, G.

Counsel: Bell, J.

From the Office of the Ombudsman:

Bohnen, L., Director of General Investigations  
Bottin, K., Co-ordinator of Systems Development  
Goodman, B., Counsel & Special Adviser to the Ombudsman

LEGISLATURE OF ONTARIO

SELECT COMMITTEE ON THE OMBUDSMAN

Thursday, September 10, 1981

The committee met at 10:09 a.m. in room No. 228.

OMBUDSMAN'S EIGHTH REPORT  
(continued)

Mr. Chairman: Yesterday when we adjourned we were discussing the statistical analysis with Mr. Bottin. I will ask our counsel to lead off the questioning today.

Mr. Bell: Thank you, Mr. Chairman. Mr. Bottin, we have a lot on our table to complete this morning. I suggested to you earlier, and I am wondering whether you will take me up on it, that to the extent our discussions get into matters of fact, which may be unique or from experience of any one or more of the directorates, it is unfair to ask you the whys and wherefores. You would have to refer to your colleagues.

I would suggest maybe if everybody who is responsible for a directorate might sit around you today, rather than deal with everybody seriatim, let us turn it into a round-robin affair and to the extent your colleagues can assist you on any one point, speaking for myself I would invite them just to have a light turned on and come in. Michael Zacks, you might want to join in.

Mr. Bottin: I think the best thing, Mr. Bell, would be for each of the directors to come forward as it relates to each area in the course of my comments.

Mr. Bell: Okay.

Mr. Bottin: I think for us to move through it as quickly as you would like it has to flow out of the documents which are admitted so far and handle that in sequence.

Mr. Bell: All right. If you will permit me a bit of leading this morning, I think maybe to summarize from yesterday and to perhaps take it forward more quickly than originally anticipated, we were into your statistical synopsis and statistical comparison--our document labelled A--yesterday and you had explained to us the breakdown of the first two pages into the categories.

The statistical synopsis under files speaks for itself, comparative fiscal 1980-fiscal 1981. You told us that under the heading complaints if we made that closed complaints it would be more meaningful, that those statistics flow from the statistics referable to the files closed within that fiscal period. Is that correct?

Mr. Bottin: That is correct.



Mr. Bell: All right. Turning over the page, under the heading of no-followup complaints and information requests, you explained to us that the procedure had been expanded to include your CAPS department and that, notwithstanding there was an increase in the number of potential complaints under this category because CAPS was now on stream, the aggregate number decreased, which is attributed probably substantially to the fewer complaints received from the hearings that you conducted throughout the province. Is that correct?

Mr. Bottin: That is one factor, Mr. Bell.

Mr. Bell: One factor. Are there any others that you feel would assist the committee?

Mr. Bottin: Before I get to that point, I would like to go back and set a couple of points straight which were raised yesterday and put on the record one point that flows out of our discussions before the committee began sitting this morning.

Mr. Bell: Okay. All right. Go ahead.

Mr. Bottin: First of all, Mr. Chairman, I would like to make a matter of record that we have again submitted the capsule summaries which outline the issues and the substantive side of all the cases closed by the office through the previous fiscal year, 1980-81. This is a document that is identical to, in terms of format, the document which was submitted with respect to complaints closed in the previous fiscal year, 1979-80.

Mr. Bell: Thanks, Mr. Bottin. Members of the committee, this is a document--which I am holding up--blue covered, labelled as Mr. Bottin has described it. Originally, this information was part of the Ombudsman's report, but for very obvious reasons it has been deleted. About two years ago the committee passed a motion saying that whenever it considered annual reports of the Ombudsman this material would be provided to it. It is, as I understand it, a line summary of all of the cases that were closed within the--

Mr. Bottin: Apart from the no-followup complaints.

Mr. Bell: Apart from no-followup--where files were opened.

Mr. Bottin: Yes.

Mr. Bell: For the fiscal year in question. Just bringing that home a little further, at page one under files closed, the number 5,083 is shown. There are 5,083 line summaries--

Mr. Bottin: Mr. Bell, that is not correct. The line summaries correspond with each allegation rather than each file closing.

Mr. Bell: I am sorry. You are right.

Mr. Bottin: So you will see repetitions of file numbers coincidental with that situation. It corresponds with the number of complaints closed, as opposed to the number of files closed.

Mr. Bell: Okay. Proceed, Mr. Bottin.

Mr. Bottin: The other points I would like to raise by way of introduction this morning are that I made a mistake yesterday to the extent that I indicated the overall average duration for jurisdictional complaints was 420 days in 1979-80 and 484 days in 1980-81. Those figures are the total duration to closing figures for Workmen's Compensation Board complaints, not all of the complaints for the office.

Mr. Bell: So at page three of this material we can add down at the bottom, Workmen's Compensation Board 1979-80, 420.

Mr. Bottin: That is correct.

Mr. Bell: And for 1980-81?

Mr. Bottin: 484.

Mr. Bell: While we are on this point, you were asked for information referable to a breakdown of the complaint disposition summaries by category. You have provided me with three pages extracted from a document that you have internal to your office this morning which contains that information. Am I correct?

Mr. Bottin: Mr. Bell, there are really two documents that are coming to the committee. First of all, as per our arrangement this morning, I have provided you with three pages from our management report. Those pages set out the number of complaints closed by jurisdiction as well as the number of files closed, setting out average duration to closing figures on an office-wide basis and a directorate basis.

Mr. Bell: Do we have any extra copies? Before we go on, I would like to have this document identified in a little more detail. Is it a statistical study that your office undertakes after the close of each fiscal year?

Mr. Bottin: I would not describe it as a study. I would describe it as an ongoing report that is more specific than the information we provide in the annual report. It is treated as an advisory document to the Ombudsman.

Mr. Bell: What is it intended to show or do?

Mr. Bottin: It identifies, flowing out of the overall numbers, the work volumes associated with the closings for each directorate; so the Ombudsman has a feeling for the distribution of the work across the office in any fiscal year.

Mr. Bell: What does the Ombudsman do with this document?



Mr. Bottin: As I explained before our meeting this morning, Mr. Bell, I am not privy to what the Ombudsman does with it specifically, simply because I do not attend those meetings.

Mr. Bell: And this document was prepared by you and your staff after fiscal year 1981?

Mr. Bottin: That is correct. The sequence of production is the annual report first, this document second, and any other analysis after that.

Mr. Bell: Members of the committee, I think for identification purposes and while we are under this category, we will give it a designation of E, if I might.

Mr. Philip: That is the one that has the heading table five and has an 18 at the top of the page?

Mr. Bell: That is correct. There are three pages in that. Do you want to stay with this document for a while, Mr. Bottin, or do you want to go on and pick up--

Mr. Goodman: Excuse me, Mr. Chairman, for record purposes, I believe that E has already been marked as the flow chart in progress system. Perhaps you might want to designate it F.

Mr. Bell: Mr. Bottin, how would you like to proceed now?

Mr. Bottin: I feel the best way to proceed is to speak to duration, which is what is basically outlined here that would not otherwise be with the committee, as we did it in the order of proceeding through the statistical synopsis. There are so many other things that tie in with that concern.

Mr. Bell: Let us do duration then.

Mr. Bottin: No, that is not the approach I was suggesting. The approach I was suggesting was to proceed from top to bottom through the document, and when we get to duration then we can speak to the specifics that are set out in document F.

Mr. Chairman: So we are still dealing with A?

Mr. Bottin: That is correct. If it is all right with everyone, we will proceed through that document in order.

Files opened: I do not have any additional comments other than what you see in writing there. I think that highlights the major factors. Again, the volume has dropped on the file opening side from 5,475 to 4,022 on a fiscal year comparative basis. Files closed have increased from 4,655 to 5,083.

10:20 a.m.

At this point, if I can tie it in with the no-followups simply because, to appreciate the total volume of work coming to the office and, in turn, the total volume of work being handled by the office, you have to put the two numbers together. For example,

if the no-followups are added to the files opened, in that way looking at what is coming to the office, in fiscal year 1979-80 there were 10,572. Again, that's adding file openings to no-followups. For fiscal year 1980-81 it was 8,709.

Following the same pattern and looking at the closings, adding no-followups to file closings--keeping in mind again that no-followups are handled the day of the interview so that they are both openings and closings, in a sense--there were 9,572 matters dealt with by the office in fiscal year 1979-80; in 1980-81 there were 9,770.

Out of those numbers you can perhaps have a better feeling for the fact that, although our intake may have been down, our output was up--speaking to both sides of the area, in the no-followups and the file closings, and the file openings and the no-followups.

Mr. Bell: May we conclude, because your no-followup matters in 1980-81 were less than in 1979-80, if I am reading this correctly, that the emphases in your increased production, if you will, were file matters, for want of a better word--what I would like to describe after today as work representative of the office, or--

Mr. Bottin: Well, it's at the core of the office's mandate.

Mr. Bell: Core office work: jurisdictional and nonjurisdictional matters.

Mr. Bottin: Yes. And I will speak to the increase as it relates to jurisdictional complaints, which is apparent from the numbers as we proceed through the synopsis.

Mr. Bell: All right. Can you help me with just one thing that I can't resolve? You have a drop in your caseload of 1,080 files, year to year. The text of the report--and I believe it--

Mr. Bottin: But you are speaking now to the in-progress figure, Mr. Bell.

Mr. Bell: The in-progress figure has dropped 1,080. Is that correct?

Mr. Bottin: That's correct.

Mr. Bell: There was an increase in file closings of 428.

Mr. Bottin: That's correct.

Mr. Bell: Is there a relationship between those two figures? And if so, what is it?

Mr. Bottin: There is a relationship, but that relationship is not the only relationship which pertains to the drop in in-progress. In other words, you would also say that, for example, connecting to it is the factor set out in both one and



two. In other words, if the volume intake is lower and it's below the rate of closings then that's a factor that speaks to a drop in the in-progress figure apart from the one you raised.

Mr. Bell: All right. I now can see my problem. I have to add a third factor, and that is the drop in file closings.

Mr. Bottin: No. There was an increase in file closings, which led to a decrease--

Mr. Bell: I'm sorry? A drop in file openings?

Mr. Bottin: Yes, that's right. And, of course, going beyond that you get into areas where we have made just very tentative comments, and that comment comes out on this document under number nine, where we say again it appears that the public is continuing to gain a greater awareness of our jurisdiction; the Ombudsman film and the distribution of brochures across the province have influenced this trend.

That factor also applies to files opened, although it doesn't appear in the wording here that way. So there are factors that are beyond our control and that go beyond the scale of hearings and things like that which are within our control.

Mr. Bell: Let's just stay with file openings for a minute and deal with the textual part; and Mr. Goodman and anybody else may wish to assist you on this.

You attribute the decline, really, to three factors: reduction in the scale of private hearings; expansion of the no-followup procedure to include CAPS; but also in the last sentence it said, "Overall, the office received fewer new complaints and information requests," which I take to mean that net we're down on new matters coming in.

Mr. Bottin: That's correct.

Mr. Bell: Has anybody done an analysis or assessed the reason why that is so?

Mr. Bottin: Yes, I have. It breaks down somewhat as follows--but keep in mind again that I cannot fully explain the decrease, because some of the factors are extraneous to the office.

First, there was a decrease in the number of matters related to the complaint files and no-followups dealt with in the course of our hearings across the province. That's part of the reason, and the numbers are as follows: During fiscal year 1979-80 there were 1,421 interviews conducted; in 1980-81 there were 835. Flowing out of that, and making a parallel comparison, there were 1,515 complaints received in 1979-80 by way of hearings; in 1980-81 there were 896. So without speaking to which of those were no-followups and which were files, it's roughly a 50-50 split.

You can see that we are talking about a decrease on the order of 600 complainants coming to our office, 600 to 700-odd

complaints, and that partially explains the reduction in files and the reduction in no-followups just out of that single situation where we made decisions as to the scale of our hearings for that fiscal year period.

Mr. Bell: Are there any other factors?

Mr. Bottin: Some of the other factors that I have already referred to are, for instance, this question of how the public perceives our jurisdiction. How to quantify that is again an open question; I don't have an answer for that one. I know I cannot fully explain the drop; I can explain large portions of it.

Mr. Bell: What portion can't you explain?

Mr. Bottin: That portion which is extraneous to the office, namely, the public's perception and whether they come to us or not.

Mr. Bell: Okay.

Mr. Bottin: Another factor, which on an order of magnitude is about the same as the scaling down of hearings, is--if we are talking again to file openings and not the global figures--the introduction of a no-followup in the CAPS directorate. In that area I can offer a couple of numbers that--

Mr. Bell: I took that to be covered by you as the first reason for the reduction: expansion of the no-followup procedures to include CAPS.

Mr. Bottin: Mr. Chairman, I just thought I would offer you the numbers, because they're large and significant.

In fiscal year 1979-80 the CAPS directorate handled 71 no-followup complaints. In the last half of fiscal year 1980-81, keeping in mind that they really didn't get the procedure rolling until September, they handled 740 matters that otherwise would have been file openings; in other words, no-followup complaints.

For the coming fiscal year, and bearing in mind the caveats on projecting things that Mr. Morand mentioned yesterday, we are projecting for the CAPS directorate 1,764 no-followup complaints. I think you can imagine what impact that's going to have on the file openings, and in that respect we are projecting office-wide to the end of this current fiscal year 3,620 file openings--again down from 4,022 in 1980-81.

To look again at the global number, which is the total amount of work coming to the office: The total projection for this year is a figure which takes us back up to fiscal year 1979-80; 10,228 is my current projection. Again, that's off the first quarter of the current fiscal year--

Mr. Bell: Can I have that projected number again?

Mr. Bottin: Would you like me to proceed from the



no-followups to the file openings to the total so that you get all three numbers?

Mr. Bell: Right.

10:30 a.m.

Mr. Bottin: Across the entire office there are really two no-followup figures to quote. Specific to the CAPS directorate, where we see the biggest change coming, I am projecting 1,764 no-followups through the entire year. I am projecting office-wide 6,608 no-followups to the end of this current fiscal year. The global number I am projecting is 3,625 files. The sum of those two should total--and I can't doublecheck it right at the moment--10,228. Again, we are back up to numbers similar on the intake side to fiscal year 1979-80. But the point I should make is that I can no more explain this increase than I can fully explain the decrease as it relates to 1980-81 and 1979-80.

Mr. Bell: I understand. Okay, shall we go down to closed complaints, then? We have to review the statistics this morning and any further explanation you might like to give the committee as to these various categories.

I should tell the members of the committee that I am coming back to the in-progress files later when we finish the synopsis. I would just like--

Mr. Bottin: Again, Mr. Bell, are we proceeding in the order of the document or--?

Mr. Bell: The order of the document. But I--

Mr. Bottin: So it should be in-progress files next.

Mr. Bell: Next, yes.

Mr. Bottin: One point has been added under in-progress files that did not appear in our annual report, and it may or may not have been clearly set out. But so that we're talking about the mandate of the office, which is the theme that Mr. Bell has put to us earlier today, I wish to draw your attention to the fact that of the 1,080 decrease in in-progress files 645 of those were jurisdictional complaints.

Mr. Bell: So that's 600 and--?

Mr. Bottin: And 45. And that's along the last sentence under number three.

The impression should not be left that we reduced our in-progress count by tackling a lot of straightforward nonjurisdictional complaints; that is simply not the case. We significantly reduced our in-progress load by going at those matters that were jurisdictional and could be handled within the fiscal year. As Mr. Morand explained yesterday, he specifically directed each director to take that action, and I think the results show in the numbers.

Mr. Dean: In simple words, Mr. Chairman, does that mean that they cleaned up the backlog a little better?

Mr. Goodman: That's the case. In fact, one of the services of the management report that Mr. Morand requested was to give him an assessment--

Mr. Dean: I sort of wish it would say that in those one-syllable words someplace.

Mr. Bottin: Yes, I agree. The members of the committee weren't here last year when I referred to the gentleman on my left as K2B2. I had a remark that flowed out of that, but I won't repeat it.

The point I am making, Mr. Chairman--it should be a matter of record--is that 60-odd per cent of the decrease were jurisdictional complaints.

Mr. Bell: Mr. Bottin, you don't have to be concerned that this committee or its counsel would consider that you guys tackled the easiest to get out; you have never shown that propensity before and I don't ever expect you will do so again. Anybody who still has North Pickering around does not pick out the easy.

I am getting back to in-progress files, and I'm glad you offered that statistic, because when we get into the breakdowns I think you have made it much more meaningful for us as to an examination as to how those matters were disposed of. Can we get into closed complaints now?

Mr. Bottin: Sure--again, keeping in mind that closed complaints relate to each allegation that flows out of a file closing.

Mr. Bell: There is your 645, I take it, with the very next number--well, approximately.

Mr. Bottin: Again, there are multiple-allegation situations, and a lot of the cases that were around, that were older, more complex, that were closed had multiple-allegation situations riding with them.

Mr. Bell: Yes, but that's a dramatic increase--

Mr. Bottin: That's correct.

Mr. Bell: Thirteen hundred on base: that's almost a 50 per cent increase. Your 645 are in there.

Mr. Bottin: That's correct.

Mr. Bell: Okay.

Mr. Bottin: It's very substantial, and accordingly I worded it that way. I don't have anything to add to that point, though.



Mr. Bell: Whether it be the 645 number or the 1,300 increase, was an assessment made as to where and how those jurisdictional complaints were resolved?

Mr. Bottin: At what point in time, Mr. Bell?

Mr. Bell: At fiscal year-end. At fiscal year-end you show a fairly dramatic increase in the number of jurisdictional files closed on a comparative basis. Did you or your staff or anybody effect a study or an analysis of where and how those additional jurisdictional complaints were resolved?

Mr. Bottin: Yes, Mr. Bell. As it pertains to the information which appears in the two annual reports, namely, the seventh and the eighth, as I indicated yesterday, if you examine those jurisdictional complaints closed having to do with the Ministry of Correctional Services and the Workmen's Compensation Board, you will see dramatic increases in those two areas, and that is the preponderance of the increase.

Mr. Bell: Does the breakdown further show how they were resolved?

Mr. Bottin: The disposition statistics which are reflected further on, on pages three and four of the synopsis, would apply to those cases and can be related to each directorate in the office and right down to each investigator if it had to be done. There is every level of detail available to us.

Mr. Bell: On how you dispose of the additional 645?

Mr. Bottin: It is not an additional number. It is simply a number that flows out of the accelerated rate of closings. Those 645 files were within a larger group of 27,714 at the end of the year.

Mr. Bell: I don't want to get off on a red herring. I think you have answered my question, that you did take a look at the increased productivity and analyse the increase.

Mr. Bottin: Throughout the year, Mr. Bell, we were. Mr. Morand, near the beginning of the year, set specific goals for each directorate. He communicated those goals to the directors, and they took the action which they saw as appropriate.

We did identify for Mr. Morand cases which had been in progress for more than a year. In the first half of the fiscal year, we closed 550 of those out of a total of 700-odd over the whole year. We went at that problem in the first six months of the fiscal year.

Mr. Bell: Is this the first time in your office wherein goals have been set at the beginning of a period for attainment at the end?

Mr. Bottin: Mr. Bell, I would not have been privy to every situation prior to the one that I am aware of.

Mr. Bell: Is there anybody else in this room who can help us on that?

Mr. Bottin: Mr. Goodman may be able to help us.

Mr. Goodman: I am not aware of any statistical goals set before this, but I want to emphasize that these were only rough objectives to establish an incentive and they were nothing further.

Mr. Bell: I detect an atmosphere of defensiveness, and you need not be.

Mr. Goodwin: No, I am not saying that defensively at all.

Mr. Bell: Setting goals is a laudible thing, and I am just wondering if it had been done before. From what you told me, Mr. Bottin, it was substantially accomplished. If you got over five sevenths of your goal, that is a pretty good average.

Mr. Bottin: Mr. Bell, I don't know that it was five sevenths. I don't think at this point I should outline the numbers Mr. Morand put to the rest of the office, although Mr. Goodman may choose to. In other words, we came close to the in-progress goals that Mr. Morand set for the office.

Mr. Bell: Mr. Goodman, can you confirm that Mr. Morand, at the beginning of the fiscal year, I guess as a result of an analysis of the in-progress files at that time, identified certain files in the office which he believed should be closed within the fiscal period and then so directed his staff to accomplish that goal?

Mr. Goodman: My understanding is that he directed a cleanup of the old chestnuts, so to speak.

Mr. Bell: My office would call them dogs.

Mr. Goodman: We used to call them old chestnuts--a push on files that had been in the office for a long time, as Mr. Morand mentioned yesterday, that have a habit of finding their way to the bottom of the pile. They are complex files. That is why you will see later the average duration of closing--one of the reasons for the increase is that many of these complaints are extremely complex, involve multiple issues. That explains why for some reason they had not yet been resolved.

I was not privy to the discussions with each director, but my understanding is that Mr. Morand disclosed to each director certain goals he had in mind. However, he made it absolutely clear to every director that these were only rough objectives and that there was to be no compromise on the thoroughness and objectivity of each investigation.

Mr. Bell: I would not have thought otherwise.

10:40 a.m.

Mr. Bottin: Mr. Bell, further to that point--and it



would be something that perhaps you could discuss in detail with our director of special services--in that directorate they identified 135 complaints which are referenced by way of a detailed summary in this report having to do with section 42 of the Workmen's Compensation Act.

Mr. Bell: How many?

Mr. Bottin: One hundred and thirty five that had a common issue or a number of common issues. As such, those complaints were handled jointly and, as Mr. Goodman suggests, with all the appropriate quality of service requirements, right through to the point as it is set out in the detailed summary in this report. It is one of the two recommendation-denied complaints.

Mr. Bell: Then there is an anomaly in your statistics on page four. When the recommendation-denied jumps so incredibly from 14 to 146, it is because of those 131 Workmen's Compensation Board cases.

Mr. Goodman: It's 135, I believe.

Mr. Bottin: In some situations, opportunities like that presented themselves to a director and, through the director, to the Ombudsman. In other situations, it was more a case of getting a specific file handled.

Mr. Bell: Can we get on now to the statistics referable to closed complaints? Is there any more we need to say about the jurisdictional closings?

Mr. Bottin: Other than to again note the substantial increase. I think it is a very positive factor.

Mr. Bell: Nonjurisdictional?

Mr. Bottin: Nonjurisdictional complaints are down as they relate to file closings. Again, if you are streaming off the easy, straightforward no follow-ups, naturally that is going to be the effect in that area.

Mr. Bell: We have already covered the reasons that are referred to here.

Mr. Bottin: Exactly.

Mr. Bell: Could you give a little explanation as to what number six means, resolved?

Mr. Bottin: A resolved complaint for the purposes of our office is a complaint that culminated in some form of settlement, either in favour of the complainant, if you want to look at it in those terms, or by way of the Ombudsman making a determination that he would not support the complainant.

Mr. Bell: And number seven is just a breakdown of that statistic then?

Mr. Bottin: That takes it out; that's correct. The only reminder I would have in this area is that the 1,485 complaints that were found to be not supported and in turn had a settlement in favour of the governmental organization were directly arising out of the Ombudsman's finding, whereas, of the 666 settled in favour of the complainant, the preponderance of those did not involve the Ombudsman making a finding in favour of the complainant, a recommendation pursuant to section 22.

It was rather a situation where in the course of the investigation facts and matters came to light that allowed for a settlement of those complaints. We were involved in those settlements, but it is not the same thing as the Ombudsman having made a finding. There were situations of course where recommendations were accepted.

Mr. Bell: You may be selling your office short, because I think from our day and a half at your office on Bloor Street--

Mr. Bottin: Well, we are claiming we were involved, Mr. Bell.

Mr. Bell: --it became apparent there is an increasing trend now that governmental organizations, after your office becomes "formally involved" and matters have been brought to their attention, they communicate with your office and say, "We have had a second look and we think such is so and we'll undo the situation." You have lumped that into the category. You have called it settlement.

Mr. Bottin: Yes. In other words, first of all, was the matter resolved either way and then, if it was, which way did it go?

Mr. Chairman: Mr. Bottin, you mention that, in favour of the complainant, in the vast majority the Ombudsman was not required to make a finding.

Mr. Bottin: That's correct.

Mr. Chairman: How does that relate in terms of the governmental organization? Was the Ombudsman involved in all of those?

Mr. Bottin: No, simply because the situation would have been a resolution prior to, for instance, section 19(3), document or report.

Mr. Bell: I don't understand that.

Mr. Bottin: Perhaps Ms. Linda Bohnen could give you an example of a situation where an investigator in the course of the investigation has been able to work through a complaint and be communicating with the complainant, ministry officials, the investigator dealing with their superior, and in turn have it resolved prior to the Ombudsman having to consider it at a case conference and--



Mr. Bell: Mr. Bottin, she has already done that for us. We have an insight. Maybe I am misunderstanding your answer to the chairman's question. You have already told us that the favoured complainant statistic does not mean the Ombudsman in all cases made a determination. He was involved in some way. The chairman asked, "Look at the favoured governmental organization statistics."

Mr. Bottin: I'm sorry; I missed that point.

Mr. Goodman: The answer is, Mr. Chairman, that he did make a determination on all the complaints favouring the governmental organization. In other words, he found them not to be supported.

Mr. Bottin: Specifically, Mr. Bell, page three at the bottom: Findings, not supported complaints, 1,485, and that is coincidental with favoured governmental organizations, 1,485.

Mr. Bell: This is the one area I would like to stay with for a minute, and I would invite any of your colleagues who can assist to do so. That is a 50 per cent increase. I do not have the prior fiscal years. My recollection is that it may be as high as a 100 per cent increase going back four fiscal years. Has anybody done an assessment or an analysis of reasons why that is so high? If so, what were the findings?

Mr. Bottin: Mr. Bell, I spoke with the Ombudsman this morning on this point, and he stressed to me the point Mr. Goodman has made, that the quality of service through to the point where the Ombudsman made that finding has not changed in any respect.

Mr. Goodman: I can perhaps assist you, Mr. Chairman, on that. The preponderance of jurisdictional complaints made to the Ombudsman, wherein the Ombudsman makes a finding, have from the inception of the office been in favour of the governmental organization. So it makes sense that, if you increase your closed jurisdictional files, you likewise increase the number of complaints favouring the governmental organization. That is one of the reasons.

Mr. Chairman: Can you run that by us again?

Mr. Goodman: Certainly. From the inception of the office, we have found that there are more times that the Ombudsman favours the governmental organization than he favours a complaint. If you put a push on jurisdictional files and close more files, which we did this year by some 428, and you increase by 1,248 the number of jurisdictional closed complaints, which you will see, you likewise would necessarily increase the number of times the Ombudsman does not support the complainant.

Mr. Bell: Agreed. But one would think--staying statistically now in general averages--that the percentage of findings in favour of governmental organizations within the increased number of closings would remain the same if all closings are up, what, 10 per cent?

Mr. Bottin: Mr. Bell, it is far more likely the absolute

numbers would stay about the same, keeping in mind again that the process is one of fact-finding coincidental with investigations prior to the Ombudsman considering it at a case conference, and those matters come to light quickly. When they come to light, the director and the investigator write an appropriate document by way of reporting. In some cases, the Ombudsman is not signing those documents. They are stopped right at that point where it becomes obvious there is a resolution of the matter.

Mr. Bell: Wait a minute now; hold it. I thought we got that clear.

Mr. Bottin: But when you set that number, 666 against 1,485, Mr. Goodman's point is that, when you tackle the jurisdictional complaints that have been around, they tend to be ones that were hard to make a finding on, and the Ombudsman moves through to those cases himself by way of the processes in the office which have been outlined for you.

The other matters have never been that kind of problem because of the very process leading to their settlement. In percentage terms, the percentage would go down if you accelerate the rate of closing of jurisdictional complaints. The absolute number of favoured complainant situations would tend to remain the same.

Mr. Bell: Are there any other reasons you might offer why that number is increased by 50 per cent other than that offered by Mr. Goodman that, as one increases one's file closings, one would expect in absolute terms the numbers of findings in favour of the governmental organization would increase?

Mr. Goodman: The only other reason I can suggest, and it has already been partly suggested by Mr. Bottin, is that the number of closed jurisdictional complaints increased dramatically, you will note, in the area of correctional and psychiatric services and workmen's compensation.

Again, historically or traditionally in the case of complaints against the Ministry of Correctional Services, once they have been referred to the ministry themselves, if the complainant has not gone there by virtue of section 18(1), we have found those complaints to be mostly favouring the governmental organization. Very few have been favouring the complainant.

Likewise, apart from the kind of workmen's compensation complaints that you can resolve during the course of investigation, if you put a push on workmen's compensation complaints by hiring more investigators and closing more jurisdictional files, you are more likely again to find in favour of the governmental organization, which is what happened in those two.

10:50 a.m.

Mr. Bell: Except it did not happen. Of the number of closings in Workmen's Compensation Board, 135 were found in favour of the complainant.



Mr. Goodman: No, this does not include that at all.

Mr. Bell: It doesn't?

Mr. Goodman: No. Recommendations denied are not resolved for our purposes and accordingly are not in the favour-complainant, favour-governmental organization figure. That is the point that Mr. Bottin was trying to make; the difficult cases are not capable of resolution.

Mr. Bell: Okay. I am glad you brought that out. But, just a minute, complaint number 24 in your eighth report is the 32-1 situation. It represents 135 complaints. Is that correct?

Mr. Bottin: Mr. Bell, if you look at page four, "reasons not resolved, recommendations denied, 146." Of those, 135--

Mr. Bell: All I am trying to understand is, if you categorize a case as recommendation denied before fiscal closing, is that not a closed file? Or do you keep it open?

Mr. Bottin: It is a closed file. Keep in mind that there are resolved complaints; that is under number six. There are complaints not resolved; those appear as total numbers for various reasons on page four. The two together are the total number of complaints closed.

Mr. Bell: Okay. We shall skip over page two then. Mr. Bottin, and for the benefit of members of the committee, this is some background. What we are seeing here on a comparative basis is a continuing increase in this category. I think for obvious and understandable reasons, in the first two or three years of the operation of the office, this discretion was exercised rarely, if at all. The committee understood Mr. Maloney's reasons and, I think, generally agreed with them. It is a new office and you have to find your way before you can start exercising discretion.

Mr. Bottin, and anybody else, has there been a study or an analysis done of the reasons this category is increasing? If so, what are those reasons?

Mr. Bottin: Yes, Mr. Bell. The reasons are set out in the synopsis, as they are generally referenced there. We are in the course of finalizing our 1979-80 statistics. In other words, when it jumped to 169, which is a substantial jump from 70-odd--if I remember correctly from the previous fiscal years, going back three years--we looked at it on the basis of which subsection of section 18 was being utilized. Again, we looked at it, and the reasons are consistent.

The wording in the synopsis is the same as it was last year, except that we now word it as continued, rather than starting to move in that direction, which would have pertained in the previous year. It is a continuing use of that section in the way that is described in the synopsis, relating it again to the subsections of section 18 of our act.

Mr. Bell: Is there a further breakdown? That is a big

basket. "Adequate administrative or legal remedy" can cover a lot of things. For example, a person can be told, "You have a good cause of action in contract here, and I suggest you go down to legal aid, get a certificate, get a lawyer and sue." Is that the type of thing we are looking at?

Mr. Goodman: No, that is not the type of thing. If, on the other hand, a person has retained a lawyer and sued--for instance, on the Re-Mor matters that I told you about yesterday, that would be a situation where Mr. Morand would exercise discretion under section 18(1a).

You will recall there was a time when the Attorney General took the position that a right of action denied the Ombudsman jurisdiction under 15(4a). Of course, we did not accede to that argument at all. However, if the complainant has taken action, then we will put him to his election and say--this was mentioned yesterday--"If you want to proceed with your action, then we will take a look at it after all court proceedings have been concluded to see if there is anything in within our jurisdiction that the court has not determined. On the other hand, you may wish to proceed to the court and obtain a binding judgement."

Mr. Bell: That is an important point, Mr. Goodman. Is that a matter of policy now throughout the office?

Mr. Goodman: Yes, it is.

Mr. Bell: If somebody addresses a complaint to your office who has retained a lawyer already?

Mr. Goodman: Yes. There is a written policy on that distributed by the Ombudsman to every director.

Mr. Bell: And that is a policy that has been introduced since Mr. Morand assumed his duties as Ombudsman; is that correct? It is a new policy, relatively?

Mr. Goodman: No, it is not a new policy. It has been crystallized and reduced to written form. On the other hand, it is not an inflexible policy.

Mr. Bell: But I can think of a complaint the committee considered about four years ago involving the Minister of Consumer and Commercial Relations, which I think had something to do with rent review. The person who complained to your office, I think he complained through his lawyer and had already commenced an action. The decision was that he would not pursue that action further until your investigation had been completed and you reported. I think that, after your investigation, the legal proceeding was settled. That is a reverse of the policy.

Mr. Goodman: What happened in that case was that the complainant claimed he was wrongfully dismissed from the Ministry of Consumer and Commercial Relations. He had originally been hired by Housing, and when rent review was given to Consumer and Commercial Relations, they suggested that there was a conflict of interest because he owned some buildings. He was unable to enter



into a blind trust arrangement and was subsequently dismissed. He served notice under the Proceedings Against the Crown Act, but never took any further action.

Because the government carried insurance for wrongful dismissal, we did proceed to make a report and recommendations and find the complaint to be supported. The ministry said: "Let us settle the action because we carry insurance for it. That is the way we will implement your recommendation."

Mr. Bell: But, with the policy now in force, that situation would be reversed. I appreciate that it is not inflexible, but you might now tell that person: "Look, you have got counsel; you have already given notice under the act. You proceed with your lawsuit, and if you want us to hold our file in abeyance et cetera, we will take a look at the matter after the action is disposed of."

Mr. Goodman: Mr. Bell, as Mr. Morand explained yesterday, we will not tell him what he should do. We will outline the options available to him, and what we will say in a case like that is this: "You should know that if you proceed with your action and serve your writ, apart from merely serving the notice, we will, as a general rule, not investigate until your action is concluded. Then, if there are matters of maladministration that you continue to be concerned about, you might want to bring the matter back to our attention. We will see if there is anything that the court has not dealt with, and where the Ombudsman has jurisdiction to deal with it, he will do so."

Mr. Bell: Is that what you mean by "putting him to his election"?

Mr. Goodman: That's right.

Mr. Bell: In other words, you just say: "Man, you have got to decide. You go to court or you stay here--one or the other."

Mr. Goodman: No, no. He has legal counsel. But we have had cases where legal counsel has instructed the complainants--for instance, in some of the Re-Mor matters, I understand--that they would be better advised not to proceed with their action. I know of one case which I personally was involved in and which was reported in one of our previous reports, where there was a mistake in the personal property security registration system and they seized a car that a bank had a chattel mortgage on. The lawyer there, rather than proceeding with his action, brought it to our office and we achieved a resolution for him.

Mr. Bell: Could you give us some examples other than the one that is specified here, dealing with correctional facilities and medical consultants, where somebody has an adequate administrative remedy, where you would decide not to investigate or further investigate?

Mr. Goodman: Certainly. If a complainant has a right of grievance which is not set out in a statute, in which event we would not have jurisdiction, then Mr. Morand would likely exercise

his discretion not to investigate until the grievance procedure had been resorted to.

Mr. Bell: Do you mean a grievance arising out of a collective bargaining agreement?

Mr. Goodman: That's right, a grievance under a collective bargaining agreement; for instance, the LCBO or under the Public Service Act. There is some argument whether that is a statutory right.

11 a.m.

Mr. Bell: Are there any other examples?

Mr. Goodman: I think the largest single example is the one that is mentioned; that is, Mr. Morand is determined that, since the Ministry of Correctional Services does have a system for dealing with inmate grievances, inmates should first go to the ministry and then, if they are dissatisfied, come to us. You will recall that Mr. Macerollo mentioned yesterday, concerning medical complaints, that he will advise the inmate to bring such complaints to the attention of the senior medical adviser.

Mr. Bell: Mr. Macerollo may be able to confirm this, but I would take it now, under your new procedure, that such a complaint would be categorized as no-followup or referral; that you would not now open a file for that. Is that right?

Mr. Goodman: It is not necessarily true. It would depend on the facts specific to the complainant's situation. When I said yesterday that the no-followup procedure does not apply to jurisdictional complaints, I meant it in the sense that, if the matter can be adequately handled by way of referring the complainant in the course of the interview, then in a sense we do not finalize our jurisdictional determination and accordingly do not issue a 19-1, either verbal or written. It is in the course of our procedures that I can make that comment. It flows out of our procedures.

Mr. Bell: Then can you answer this? Because the CAPS are now on stream with the no-followup procedure and there will be fewer files opened in the amounts that you have given us, may we expect the statistic for 1981-82 to decline on refusal to investigate or to investigate further?

Mr. Goodman: I would not be prepared to draw that conclusion at this point, simply because it really is a situation of the state of mind of the complainant as we interview him.

Keep in mind as well that the no-followup procedure in the CAPS directorate incorporates a document which the complainant signs, indicating that he is satisfied with the information provided to him in the course of that interview. So there is a safeguard in that.

There is one further point worth mentioning on this. The Ombudsman may initially exercise his discretion not to investigate



further on the basis that there is an adequate remedy or an administrative procedure open. But, once the complainant has exhausted that remedy, the Ombudsman may reconsider his position and proceed to investigate.

For instance, when the Re-Mor matters were before the justice committee, before the committee's deliberations were terminated, the Ombudsman chose to exercise his discretion not to investigate while those matters were before the committee and the OPP investigation was ongoing.

There was a third critical factor as well, I believe; the test case and the assumption that it would be proceeded with with all due dispatch. Subsequent events compelled the Ombudsman to determine that he ought to investigate the matter; so he reopened and decided to investigate. Even though he exercised the discretion, even though this figure may increase, he may end up investigating a large number of cases, and that is exactly what he does.

Mr. Bell: Mr. Bottin, could you give us--not now, and you do not even have to read it into the record--in written form a breakdown of the 276 by departments?

Mr. Bottin: The number that were closed out of each directorate, by departments?

Mr. Bell: Yes, the 276.

Mr. Bottin: Yes, I understand that. What I am trying to get at is, I thought the thrust of our discussion was whether it related to what subsections of the act were used or whether it was refused--

Mr. Bell: I do not care whether it is refused. I would like it by departments.

Mr. Bottin: Without reference to the subsections that have been alluded to here?

Mr. Bell: Yes.

Mr. Bottin: Okay.

Mr. Bell: Can we go on to number nine?

Mr. Goodman: Mr. Bottin will provide that information to you. He is not in a position to do it now.

Mr. Bottin: I do not have a listing with me, Mr. Bell: but it can be run on the computer.

Mr. Bell: I think we have said as much about number nine as we have to. We all understand now the expansion of that procedure, Mr. Bottin, unless you feel you would like to spend a few moments with the committee on the material in the documents that I labelled yesterday D and C?

Mr. Bottin: I think the documents speak for themselves. There doesn't seem to be a problem on the part of the committee understanding what a no-followup is.

Mr. Bell: The bottom line of it is that the decision to open a file is reserved until such time as somebody within your office makes a decision as to whether the initial contact is enough.

Mr. Bottin: That is right. There is an approval process on the no-followups; and, if a senior person judges that the interview having taken place warrants a file being opened, then it comes out of that situation irrespective of what happened at the interview. And that is office-wide.

Mr. Bell: All right. Before we get to average duration of closing, Mr. Chairman, I would like to leave it to the committee members whether they have any questions as to what has gone on so far.

Mr. Chairman: Committee members, any questions? Mr. Philip.

Mr. Philip: Maybe it is a simplistic question, but it seems to me that one of the ways in which agencies increase their caseload is by word of mouth, and it either increases or decreases depending on their success rate. What we see here is a steadily declining number of individuals coming to the Ombudsman for some kind of satisfaction, if I look at your figures.

Mr. Bottin: Mr. Philip, of course, I spoke to our projection off the first quarter for the current year, and it is the reverse of that trend on the intake side. It is backup to figures that are comparable to 1979-80; in other words, 10,228 in total projected off the first quarter. Granted, there are summer months, there is Christmas, other factors that come later in the year, but I can't fully explain the drop on the intake side as between 1979 and 1980. I can't fully explain why it has increased in 1981-82 in the first quarter and projecting off that to the year end.

Mr. Philip: Has anyone run through the computer or done any study to see whether the general economic conditions existing at the time affect the number of complaints? In my riding office I find that people will get into an economic jam in one area and look for solutions in other areas, and then on a problem to which they said, "Well, what the hell then, forget about it," three years ago, suddenly they decide to press it now that the mortgage is coming due and they have to pay 21 per cent. I am wondering if your increased projection in this early quarter may be attributed to the general economic climate?

Mr. Goodman: Perhaps I can assist with that, Mr. Philip. I am not aware of any statistical study that has been done, but I was going to say facetiously before that the increase this year is directly correlated to the increase in the interest rate. In fact, I am not being facetious. I was with the office from the outset in 1975, and you will recall that that was the introduction of a



period of restraint in government. As administrative government programs were tightened up, we received a number of complaints simply because people were being cut off benefits, people who had previously received benefits or grants in the past, or they were suddenly receiving less than they were before.

Second, as you quite rightly point out, whereas people perhaps were prepared to write off amounts of money that they felt they were owed by the administrative arm of government in the past, in a time of belt tightening they are not, and they are going to press their complaint through with the ministry and then ultimately to the government. Good examples are student awards, overpayments, home buyer grants--

Mr. Philip: Percentage of disability allowance.

Mr. Goodman: That is right.

Mr. Bottin: Further to Mr. Goodman's point, if you review the earlier annual reports where we included geographical distribution analysis as to the source of the complaints that were closed in each reporting period, and we have that computer figure on the printout in the office right up to the present, it has always struck me--and I am not being fair to Ottawa--that the complaint intake rate from that area in relation to population has always seemed low to me. I often wondered why.

When you think of the nature of employment in Ottawa and the cushion they have in terms of benefits and everything else, maybe it speaks to your point as to who is vulnerable in situations where the economic climate is as it is today. That is a general point.

11:10 a.m.

Mr. Goodman: The other further point is, of course, as Mr. Morand mentioned yesterday, the more government plays a part in our lives, obviously the more complaints the Ombudsman is going to get. Likewise, in areas where the government formerly played a part, if the government retires from that area in the future, we will receive as a result of that a decrease in complaints that formerly existed; for instance, the home buyer grant. It is a fact that we don't receive home buyer grant complaints any more, because the program has ceased to exist.

If the Ministry of Consumer and Commercial Relations chooses to let industries regulate themselves rather than the government in a way, then we will receive a decrease in the number of complaints against that ministry and against the programs offered by it. So these are some of the intangibles that Mr. Bottin mentioned.

On the question of publicity, I know Mr. Morand's philosophy is that he doesn't care if people know who the Ombudsman is, so long as they know there is an office that can help them with their complaints. And I know in dealing with complainants to our office that they know there is an office; that is why they have contacted us. They may not know who the incumbent is, but Mr. Morand is not

really that concerned about that, so long as they know there is some office in this province that can help them, and they find their way to us.

Mr. Philip: Would you not say, though, that if the person with the problem identifies with one person--just from my perception, Arthur Maloney was a very popular fellow. He may not have been always popular with certain politicians, but he was certainly pretty popular with the public, They saw him as somebody who was a good guy, on their side generally. Would you not say that may have affected the caseload? You can't identify with an institution, because all these people have been burned by institutions, particularly by government.

Mr. Goodman: I agree with you, I think it has, and I think Mr. Morand is the beneficiary of the high profile that Mr. Maloney maintained. Mr. Morand does not choose to maintain the same high profile; but, as I say, it is as a result of Mr. Maloney's pioneering work.

You have heard Mr. Morand say many times that people know that there is an office of the Ombudsman. He is not that concerned that they don't know the incumbent is Donald Morand because, in fact, that may lead to a misapprehension on the part of complainants that the Ombudsman himself is going to investigate their complaint.

Mr. Morand is more concerned that there is personal contact maintained by the investigators and that the work is done within the office, because I can tell you that did lead to problems with people coming in expecting Mr. Maloney and wanting him to investigate the complaint personally.

Mr. Philip: Do you have any statistics or figures or studies on the ethnic background of the people who are coming to you? Is there a larger percentage of new Canadians coming to you now than before, or what is your influence in the sense of gaining confidence of some of the people who have recently arrived in Canada?

Mr. Bottin: The answer to that question directly is no. The one statistic we did keep for a little while, but is not really available over a continuing period of time, was language facility, because we thought that was important as it related to the operations of the office, but we don't derive that necessarily from anything that we are collecting statistically.

Mr. Goodman: We simply don't ask the question. We feel that it might be offensive to some, and you can't tell by the name of the complainant.

Mr. Shymko: I would like to go back to perhaps a sort of philosophical approach to that first point on the statistical synopsis.

My understanding of the purpose of the establishment of the Ombudsman's office was to monitor the administrative performance of the services of this government. If there is an improvement of



that administrative service of the government, obviously you will have a decrease in complaints. Could we not jump to the conclusion that you have done a damned good job in the past five or six years, that there has been an improvement in the government services, the administration of these services and, therefore, a decrease in some of these complaints, rather than to attribute it to the personality of the Ombudsman, that perhaps someone was more popular or someone less popular, or economic factors?

Could this be another factor or element that we could rationally use as an explanation?

Mr. Goodman: Certainly we would be pleased to accept that conclusion, but in fact--I am not being facetious--it is the case, for instance, where the Ombudsman makes general recommendations, as he has in the past, that a practice be formed or a law be changed, then there will be that much of a decrease in new complaints.

Just for example: Two of the complaints that resulted in amendments to the Vital Statistics Act were directly attributable to this office. One was that transsexuals who have sex change operations can now receive birth certificates in their new sex designation with appropriate medical proof. So, needless to say, transsexuals who have the same problem in the future would not have to come to our office.

Second, persons who wish to register their children in a joint birthname of themselves and their husbands can do so with either name coming first. Before, it was the husband's name that had to go first.

Mr. Bell: It reminds me of Bob Elgie's comments on that. He was waiting for the day when Mr. Hyphenated married Mrs. Hyphenated.

Mr. Goodman: That is right. You get quadruple hyphenateds, or whatever. Seriously, a person with a similar problem in the future would not come to our office.

Another one is, we had a lot of complaints from women who wanted their birthnames on their driver's licences. For a long time the Ministry of Transportation and Communications refused to do that unless they had a decree nisi, a decree absolute or an adoption order. We received a number of complaints. They subsequently changed their procedure. Once that was changed, we no longer received those types of complaints.

Mr. Shymko: In other words, we should not be caught with the impression that if there is an increase in the volume of complaints you are doing a good job, and if there is a decrease there is something wrong with you.

Mr. Goodman: No. I do not think you can draw a direct parallel. I do not think there is any Ombudsman's office that has done such a great job that it has put itself out of business.

Mr. Philip: But I would think that the number of

abandoned may give us a good indication of whether you are doing a good job.

Mr. Goodman: That is not so either, because some of the reasons that a complaint is abandoned--well, I will give you one--

Mr. Chairman: I was just wondering; we have a second section to this--

Mr. Shymko: I have a few more questions if you do not mind. They will be very short.

Mr. Chairman: I was addressing myself to Mr. Philip. We are dealing with abandonment; that is in the second section of Mr. Bottin's report. We can get into that--

Mr. Philip: I'm sorry. I just thought it was a logical supplementary.

Mr. Bottin: I was going to raise a point further to the member's point here. One of the reasons we are supplying the select committee with the capsule summaries, which were delivered this morning, and from the year previous and so on, is that it does allow members to do a little bit of individual research specific to program areas, specific to the types of allegations we are receiving simply by flipping through the document.

If you are interested in the Ontario home buyers program or something like that, you can see right there the nature of the allegations that were brought to us, the result, focusing on organizations and so on. So you have that facility by virtue of that document.

Mr. Shymko: My second question: In the introduction to the report of the Ombudsman, the figures mention that 61 per cent of all the complaints since May 1975 dealt with nonjurisdictional areas. That is a very high percentage. In other words, I would understand that since May 1975, right up to March 1981, 39 per cent of the files involved complaints which were within the jurisdiction of the office, since 61 per cent were nonjurisdictional.

You mention in the first page of your statistical synopsis that there is an overall decline in these nonjurisdictional complaints received. Do you perceive that decline in this fiscal year? Or do you perceive that this decline is continuing?

Mr. Bottin: We perceive it over the last two fiscal years. But again I qualify that with the projection for the current year; in other words, reversing that trend.

Specific to the numbers you have cited, the thing that has to be kept in mind is that those percentages arise out of file-related matters; and, of course, if we are diverting work to the no-followup side of our procedures, then those percentages change simply by virtue of that, all other things being equal. So it is a little bit dangerous to look at those numbers quite in the way you have. I guess that is all I have to say on that point.



Mr. Shymko: Because there is obviously a time factor and a money factor involved in the expense of dealing with complaints that do not fall within your jurisdiction, is it not preferred that the figure be reversed, that 61 per cent of your complaints should be within the jurisdiction of your office and only 40 per cent or so, ideally, should be nonjurisdictional? That is what the mandate would be, or the preferred.

11:20 a.m.

Mr. Bottin: Keep in mind that those numbers do not reflect the extent of the effort and human resources that are allocated to the volumes of cases, especially in a situation where we are streaming to the no-followup side where it is handled in the course of a half-hour or an hour interview with no further documentation required. We are spending one hour on those, albeit a large number of them; then, at the same time, we are spending man-years on other cases that are jurisdictional.

Mr. Goodman: I think you should also know, Mr. Shymko, that at the 1980 World Ombudsman Conference in Jerusalem a Professor Gerald Caidan delivered a paper wherein he studied a number of Ombudsman offices around the world and found that on average two thirds of the complaints made to Ombudsmen throughout the world are outside of the Ombudsman's jurisdiction despite the best efforts of Ombudsmen to publicize their jurisdiction.

I can tell you that in Canada people used to confuse the CBC Ombudsman with our Ombudsman. Of course, the CBC Ombudsman has no statutory restrictions; it is not established by legislation. I recall being on a hearing in Whitby where some irate complainant said he was unhappy because we put his complaint on our television program. I can tell you there were a lot of problems, because people knew that the CBC Ombudsman can look at anything--business, government, federal government, municipal government--and they likewise assumed that we could that.

Mr. Shymko: Would you say that if there were an improvement of the publicity or the educational aspect of informing the public exactly what the areas of jurisdiction are that there would be a dramatic decrease, hopefully, of that nonjurisdictional section of complaints?

Mr. Bottin: Mr. Chairman, in answer to the member's concerns, I think the second paragraph on the second page of our report in the introduction speaks to the level of service we provide where we are offering the complainants essentially a referral. We have claimed historically that we are assisting 98 to 99 per cent of those people. Is it better that they avoid our office and not get a specific referral? Or is it better that they come to our office and get a specific referral and maybe save themselves a lot of time? Of course, we are perhaps dealing with the federal government.

Mr. Shymko: That is a very important question to raise here.

Mr. Bottin: Certainly the service we are providing, and

we have stated repeatedly that we will continue to provide it, is to give that person a very specific referral so that he is not spending hours and hours being bounced around from one telephone number to another.

Mr. Shymko: But would that not be the function of such services as the citizens' inquiry bureau and other areas that provide the information? Is not your mandate basically not to inform people where they should turn to but to solve and resolve problems in cases that fall within your jurisdiction?

Mr. Goodman: Your concern is very well taken. It has been a continuing concern of both our office and the committee from the inception of the committee's hearings. We are doing our best to substantially reduce the number of nonjurisdictional complaints. That is why we have a film and a brochure, speaking engagements and hearings. We are just doing our best to let the public know the limits of the Ombudsman's jurisdiction.

On the other hand, there will always be those persons, even though they know the limits of our jurisdiction, who are going to come to our office.

Mr. Shymko: Obviously there is no doubt that you should be complimented on the caseload of past work that has been reduced. I think it is a very impressive figure.

On the other hand, I look again at the first page and the number of resolved complaints. It is my understanding that the 545 resolved complaints are jurisdictional complaints; is that right?

Mr. Goodman: I am sorry; where are you referring?

Mr. Shymko: It is figure six on the first page of your statistical synopsis, the 541 resolved complaints are jurisdictional complaints.

Mr. Bottin: The preponderance of them are, a large percentage of those being coincidental with (inaudible)

Mr. Shymko: But we are talking about the 2,151 complaints that were resolved. They are jurisdictional, are they not?

Mr. Bottin: The preponderance of the resolved complaints are jurisdictional, not every last one of them. We always historically have had a handful of nonjurisdictional complaints that, when you examine the substance of them, we were able to resolve.

Mr. Shymko: But these are jurisdictional.

Mr. Bottin: The preponderance of them are, yes.

Mr. Shymko: In other words, basically, if you look at the total of 3,602 jurisdictional complaints, the 2,151 which were resolved leaves you with 1,451 unresolved jurisdictional complaints.



Mr. Bottin: Set against the reasons for them not being resolvable as set out on page four. Of course, again it is not only specific to jurisdictional matters. As you can see, one of the reasons is the matter being outside our jurisdiction. In situations where the Ombudsman made a decision pursuant to section 18, which are listed there as "refused to investigate or further investigate," we don't consider those resolved as such.

Mr. Shymko: But is it correct to say that 1,451 unresolved complaints, when you subtract the figure of 2,151 from 3,602, are basically jurisdictional complaints?

Mr. Philip: Excuse me. Where are you?

Mr. Shymko: I am on the first page of the synopsis, and I am subtracting figure six from figure four.

Mr. Bottin: No. I don't think you can do that. The number of complaints that were resolved total--

Mr. Shymko: For 1980-81 they totalled 2,151; that is what it says.

Mr. Bottin: That is correct.

Mr. Shymko: And the number of jurisdictional complaints--

Mr. Bottin: Totalled 3,602.

Mr. Shymko: So if you subtract--

Mr. Bottin: Not in absolute terms but, by and large, yes.

Mr. Shymko: In other words, we have approximately 1,400 unresolved complaints left from the fiscal year of 1980-81?

Mr. Bottin: No, Mr. Chairman. These statistics only pertain to closed complaints; so they were not resolvable at the time of closing. If you examine the reasons on page four, you can appreciate that a large number of them are out of our control.

Mr. Chairman: Mr. Bottin, I would like to interrupt. Mr. Shymko made reference to three and four for additional explanations. We haven't dealt with pages three and four, your second section. I would like to get into that now, and perhaps we can get the answers to your questions.

Mr. Shymko: Fine. I don't seem to understand table five, which was distributed today, in the area of legal services. For example, in 1978-79, compared to 1979-80, you had a decrease in the number of cases dealt with by legal services. On the other hand, you had an increase in the duration days.

Mr. Chairman: Mr. Shymko, I am going to interrupt. We are going to be dealing with sheet F at a later point. I would like to get through A this morning if we could.

Mr. Shymko: All right. I will make a note of that, Mr. Chairman.

Mr. Chairman: Fine. I will ask the counsel to lead off on the second section, page three.

Mr. Bell: Mr. Bottin, I would like to telescope the rest of this, pages three and four. We all have an understanding of the categories on page three--

Mr. Bottin: Mr. Bell, I have left with the clerk documents to be circulated. One of the documents is a fairly lengthy outline of the definitions which apply to all the terminology that is shown here.

Mr. Bell: I was just going to mention that, and I think we can make reference to that, as is required, afterwards.

What is really important to me and members of the committee--because this deals with your closed-out items, the committee is interested in examining with you the duration taken to close out those items. Item 10 at page two gives you the comparative general averages of durations; fiscal 1980 is 153 days and fiscal 1981 is 207.

That brings us to page number three, and under the complaint disposition summary--I think that is where we closed off yesterday when we were speaking about durations, by these categories. If members of the committee will place beside page three this document F, the three-page extract from the Ombudsman's internal document, what it does is break down the matters disposed of by the office within the period of time whether or not files were closed or files were involved.

11:30 a.m.

Mr. Bottin: No. These statistics only pertain to files closed. When you start to talk about jurisdiction, you really have to talk about allegations and complaints. Accordingly, you will see that the average duration to closing specific to jurisdictional considerations is expressed as flowing out of complaint volume numbers; in other words, 36 out to 296 days.

Mr. Bell: That is a good point. Where you are under the category jurisdiction complaints, if you go to document F you can see that for fiscal 1979-80 the duration was 255 days. That is found at the bottom in the middle column.

If you want to make it complete, if you look at the bottom column of the page, the left column shows you 1978-79, which is the year previous to the other statistics, you will see the duration of 173 days, in 1979-80 it is 255 and 1980-81 it is 296, meaning that of the jurisdictional files closed within the last period, the average duration was 296 days.

If you just cast your eye up each of the columns you will see that this document breaks the office down by departments. For



example, for 1980-81 under general investigations, they closed 493 files, with an average duration of 501 days.

Mr. Bottin: That would be jurisdictional complaints, Mr. Bell, not files. Files appear as the last item on the last page of table five.

Mr. Bell: I am sorry. I am glad you brought that up.

Mr. Bottin: General investigations--568 files at 495 days.

Mr. Bell: What is the difference between complaints and files?

Mr. Bottin: Again, Mr. Bell, a file is a file folder. It contains a closing report which can have more than one allegation and certainly more than one jurisdictional allegation. From there it flows that when you talk about jurisdiction you have to count it on the basis of an allegation-by-allegation consideration. For that reason the duration calculation on a file basis is slightly different from an allegation basis.

Mr. Bell: I am sorry. I took the last page table to be all complaints, all files, jurisdictional or nonjurisdictional.

Mr. Bottin: Yes, all complaints closed. Now you chose the director, of course, where they are very close, because that directorate in that year, by and large, handled only jurisdictional matters.

Mr. Bell: No, no. I took the last table to mean all files, all complaints, jurisdictional and nonjurisdictional.

Mr. Bottin: Well, of course, it is segmented by jurisdiction, Mr. Bell; each figure you have quoted would be specific to the jurisdiction as we determined it in relation to that allegation, and the whole document is segmented that way. But there is a figure relating to all complaints closed, and that is on the third page. That brings it together. It aggregates it.

Mr. Bell: I know. You and I are ships passing in the night, and I think it is my fault. Go back to the first table, jurisdictional complaints closed; it is not a pure statistic for files but it is the only statistic in this table that deals with jurisdictional matters alone. Am I right?

Mr. Bottin: Yes, and of course, it has to relate to complaints, because complaints equal allegations.

Mr. Bell: Whether or not it is files, the average duration shown for general investigation to dispose of a complaint is 501 days. That may not correspond to the number of days the file was open. I understand that.

Mr. Bottin: By virtue of the office procedure, certainly. The director in that area has always stressed that point to me when preparing these kinds of reports internally for

the office, namely, these files have been in the legal directorate for a period of time having 19.1 letters prepared on them and that sort of thing.

Mr. Goodman: Apart from that, if the person has multiple complaints, some may be resolved during the course of the investigation and some the Ombudsman might be compelled to issue a report on; so the complaints would be closed at different times.

Mr. Bell: I know, but no complaint would survive the closing of a file?

Mr. Goodman: No.

Mr. Bell: So I think we can state 501 is a reasonable estimate.

Mr. Bottin: There is very little distortion, Mr. Bell, because if you look at all complaints for that directorate, it is 494.

Mr. Bell: Yes, but all complaints include nonjurisdictional.

Mr. Bottin: But in that directorate, Mr. Bell, there are so few of them that there is very little distortion and that is why the numbers are so close, 494 to 501.

Mr. Bell: We are only arguing about seven days. I don't think it makes any difference. I just want the members to get an idea of what these tables are saying.

Mr. Goodman: The members will recall that the nonjurisdictional complaints would have been sifted out at legal, and only those that were jurisdictional generally would go into--

Mr. Bottin: --general investigations. Yes, that is right.

Mr. Philip: Part of the explanation for the steady increase in the number of days is the whole business of getting rid of these chestnuts or whatever you call them. Now that is over, can we expect a decrease in that in the coming year?

Mr. Bottin: I would not reach that conclusion for this reason, and again I have not studied it globally and I certainly have not on a case-by-case basis, but you can appreciate that if we have succeeded in closing matters that are fairly complex that were around for a long time and perhaps a number of them for more than a year--because that is the way we ran our computer program for Mr. Morand--there may yet be, and certainly with North Pickering I would argue there is, lots of cases around that may even be more complex and have been around for a long time for that reason. In the years when they come down, albeit not out of a bad backlog situation like we had before, they are going to upwardly affect that average.

Mr. Philip: So you are going to have Pickering. Re-Mor may drag on for a long time.



Mr. Goodman: Hopefully it won't.

Mr. Philip: There may be others like that. But surely, if you have had this major push to get rid of these lingering complaints and if you have justified your increase in the time taken as a result of that, as a general rule we should expect a decrease. If there is not a decrease, then there is something wrong in your operation.

Mr. Bottin: All other things being equal, I would tend to say yes. But what if we introduce the no-followup procedure in another area?

Mr. Bell: No, I can answer that, which is why these three pages are so important. Because we are able then to "purify" these statistics.

Linda Bohnen has told us that general investigations substantially deal with jurisdictional matters. There is no doubt you have jurisdiction and the full force, if you will, and facilities of the office are behind each of those files. That is 501 days. If we look at this fiscal 1981-82 and that goes up to 580 days for example, we will be asking Linda, "What happened, Linda?"

On the other hand, if it goes down to 400 days, then we would be saying: "You guys were really doing a heck of a job this year."

Ms. Bohnen: Mr. Bell, if I can make a couple of comments that might respond to what Mr. Philip has been saying: All things are never going to be equal and, looking into the year ahead, I can tell you that there are some factors which may well make the statistic worse or certainly not better.

There were continual jurisdictional wranglings going on between our office and the ministry concerning a tribunal which only very recently was resolved. Those complaints, which were in the office for possibly in excess of a year just waiting to see if we could investigate them, have just now come for investigation. If those investigations are completed within the year, as I would expect they would be, the number of days is going to be well in excess of a year.

In the case of the health disciplines board, when we finally could complete the key investigation which led to the application for a declaration over jurisdiction, there were a number of discussions between ourselves and the board as to the disposition of the case the merits of which apply to a whole host of other cases which could not be finalized until that case was disposed of.

As well, there are Pickering cases in the office, quite apart from the ones which are the subject of Keith Hoilett's hearings and report--cases which have just been in a filing cabinet untouched. If all the cases in that group are disposed of, we may well have to begin to investigate all these other Pickering cases. Hopefully, we could do it within the year, but that statistic as well will boost our numbers.

Mr. Philip: Would it not be of assistance then to this committee at some point in time next year where, if you do have these extreme exceptions, you would isolate those figures and you would give us in those years figures that would be comparable to the average type of caseload that you have had previously?

11:40 a.m.

Mr. Goodman: That is a point well taken, Mr. Philip, and we will certainly act on it.

Mr. Bell: Put notes on your financial statement.

Mr. Bottin: It also parallels, Mr. Chairman, what we have done by way of our average duration explanation in the context of no-followups where that is distorting it. We said had they been files, those straightforward matters, we would have had a lower total average duration to closing. That is the point we make on page three. That kind of isolation is possible, and we will endeavour to do it.

Mr. Philip: All that I am saying, and I say this with the greatest of respect, is that if that figure continues to go up, next year if I am on the committee, I hope you have some pretty good explanations.

Mr. Bottin: Mr. Morand made a point as well that again will apply. If we are in year seven, of course, we can have a seven-year-old case.

Mr. Bell: May I just make a point that, to the extent that there are good and sufficient reasons for workloads or durations not decreasing, they lie within this column, jurisdictional complaints closed. Certainly all members have had the experience in investigating or preparing something for a result with their constituents, and anybody in the legal profession knows this as well, and there are all sorts of things that can delay your process.

I would say, though, when we turn the page and we take a look at those matters that are not within the jurisdiction of the Ombudsman or should require minimal work, that is where a scrutiny by the committee next time as to trends may be appropriate.

Mr. Bottin: Keep in mind there, Mr. Bell, that that is an area where more than others would tend to be impacted by the no-followup procedure.

Mr. Bell: Well--

Mr. Bottin: Of course, I mean we are taking them out of the calculation, the easy ones in that category as well.

Mr. Bell: You are not taking nonjurisdictional out.

Mr. Bottin: Yes, we are, Mr. Bell. To the extent that the no-followup procedure in CAPS would be specific to that area,



they would have been files the year before and they are no longer files.

Mr. Bell: All right.

Mr. Bottin: So it evens up the impact across the jurisdictional spectrum.

Mr. Bell: All right, Mr. Bottin, even saying that, one would wish to hear from Ms. Bohnen now, and certainly next year, why a matter that is nonjurisdictional would take on average 447 days to be disposed of. There may be lots of explanations for that. The nonjurisdictional decision, or the circumstance which gives rise to the nonjurisdictional conclusion, may have occurred on day 446. But I think Mr. Philip's point is well taken when you apply it to those statistics.

Mr. Bottin: Of course, one of the statistics that we have at our fingertips in the office is the reason for a complaint being found to be nonjurisdictional. It would be well within our capabilities to run a listing of those cases with a listing as much as you have asked for that other information, stringing out the reasons not resolved against organizational determination. We can do it specific to those 73 complaints and take a look at it and see what is really there as opposed to what the numbers suggest might be there.

Mr. Philip: Would it also be useful to supply to organizations that tend to refer people to you, a list of those? That that might cut down on the number of nonjurisdictional cases that are referred.

Mr. Goodman: I'm sorry. Could you repeat that, Mr. Philip? I couldn't quite understand it.

Mr. Philip: The reasons for deciding that a matter is nonjurisdictional and therefore closed, if that were provided to community information centres and other bodies like that, perhaps redone in layman's language, would that not add to the educational kind of package?

You said earlier--one of you said, anyway--that the number of nonjurisdictional cases that are coming to you seems to be decreasing as a result of your film and various other kinds of things as you run your educational programs throughout the province. Surely part of that educational program should be advising some of the groups that are funnelling people to you, the reasons why some matters may be considered nonjurisdictional where there is a shady area and any decisions that have been made in that regard.

Mr. Goodman: The difficulty with that, Mr. Philip, is that by and large these matters that are determined to be nonjurisdictional in investigation are very specific.

For example, we are investigating the Georgetown-Bradley transmission corridor. We sent a 19-1 letter; the investigation was commenced and during the course of the investigation it was

suggested to the Ombudsman that there was a cabinet minute determining the route of the transmission corridor.

That is a good example of a case where down the line it was determined that we had no authority because it was a cabinet decision. Of course, there was no way of us knowing that before, because they did not present it in response to the 19-1 letter, it was not generally known in the community, and it long predated our investigation.

Mr. Philip: But there must be certain patterns that repeat themselves.

Mr. Bottin: The only ones that I can think of are ones where perhaps we might have thought that the governmental organization was within our jurisdiction before and then suddenly they took issue with our jurisdiction and we took a second look at it. But that is extremely unusual; I do not know whether I can think of an example.

Ms. Bohnen: No. But I can give you another couple of examples of cases in which we discovered that we did not have jurisdiction after the case had been in investigations, if that helps you. I think you appreciate already that, for the case to come to general investigations, it has already been subjected to a screening process by legal services; so all the easy ones are caught at that stage.

Another example to the one Brian gave which relates to another matter coming before this committee later on has to do with the Ministry of Health and the Ontario health insurance plan. The situation as far as OHIP appeals go is still not all that clear. It is quite regularly the case that in the course of investigating an OHIP complaint the ministry agrees that the person has an internal appeal which renders the case nonjurisdictional; so we stop at that point.

It is generally cases of that type or occasionally some terribly obscure right to an appeal or review on the merits buried in some statute which nobody either in our office or at the ministry have discovered before and we then have to send the person away.

Mr. Goodman: In other words, the complaint is, for instance, that the person has refused benefits under OHIP and the ministry takes the position it is not an insured service and therefore there is no appeal. So we have jurisdiction. We start our investigation. During the course of the investigation they say, "We have decided we are going to give them the right of appeal under the act." So then it is nonjurisdictional, because they have a right of appeal under an act when that was the very basis of the complaint. There are a lot of cases like that. That is a matter that the committee, I think, will be considering later in some detail.

Mr. Bell: Ms. Bohnen, do you say that, dealing now with table five, nonjurisdictional closings, the 73 files that your office closed during that year with an average duration of 447



days all are included in the category where you find subsequent to the commencement of the investigation that there is either a right of appeal, or there is a cabinet document, or something comes to light which makes it apparent to you that it is either premature or, in any event, out of jurisdiction?

Ms. Bohnen: Yes.

Mr. Bell: I would expect you had a conversation with Mr. Morand around the end of the year as to why there were 447 days on average. Were you able to assess why it would take that long, in general terms, for that information to come to light?

Ms. Bohnen: I did not discuss that specifically, no. But for the reasons we have given, it of necessity takes that long because it is only well into the investigation, for example, that you are informed of the cabinet minute, or it is only well into your investigation and discussions with Ministry of Health officials that they decide they would like this guy to have an appeal after all.

Mr. Bell: Okay.

Mr. Bottin: Mr. Bell, in Mr. Morand's review of the information which I provided him, it was my feeling that he was not concerned in situations of the type that are referenced by the 73--in other words, he is concerned about the total delay but he recognizes the reasons.

The objective at the beginning of the year was to get at the other ones, where the reasons were not as apparent. You are looking at 73 complaints, and we are talking about hundreds and hundreds on the other side of the fence that were tackled and successfully handled.

Mr. Bell: All right, okay.

11:50 a.m.

Mr. Goodman: You will note the majority of the nonjurisdictional complaints closed are in legal, which handles all of them but correctional and psychiatric services. You will notice that it went up three days in legal and three days in CAPS; so that is not substantial.

Mr. Bell: That begs the question that the base you are working from is acceptable in the first place.

Mr. Bottin: Mr. Bell, again, the no-followup procedure in those two areas causes those figures to be at the level they are at. The more difficult nonjurisdictional complaints are handled, of course, by way of a file and, in turn, are reflected in these statistics. The no-followups aren't there any more.

I explained the other day the one situation where we thought it out and decided that, for the time being at least, we were not going to pursue the no-followup procedure. That is where the complainant writes us; it is in the legal directory. We have

decided we don't think we can deal with them effectively by trying to phone them at work. If we could institute that and make it workable, we would be able to eat into those gross numbers and get it down; in other words, divert a lot of the figures from there into the no-followup stream and have even a higher figure to show you--and you would wonder about that as well. It would get higher and higher and higher every time we did that.

Mr. Bell: Meaning that as we get into a pure statistic of the core work that your office does--

Mr. Bottin: In other words, where we have to work with the file because we have to write the complainant back repeatedly perhaps or pursue things further, irrespective of the jurisdiction.

Mr. Bell: --as that statistic becomes more pure within the definition we have just used, you are going to be showing longer durations.

Mr. Bottin: The tendency has to be that way by definition and flowing out of the procedures. That is why we are so cautious in commenting on the possible conclusion or the conclusion that the member was trying to arrive at.

Mr. Bell: Mr. Bottin, that in itself is a reason why, when these figures are next presented in a report to the committee, notes on the report will save a lot of time here, because these questions will not be raised in the way they are now being raised.

I hope everybody understands the spirit in which they are raised, and knowing how thoroughly you are always prepared I am sure you had anticipated all of this and you have explanations for it. That, more than anything else perhaps, brings home the effect of that no-followup procedure, your legal services one.

Mr. Bottin: Perhaps, Mr. Bell, at this point, as we discussed earlier--this was yesterday--we can talk about the new systems in the office in the context of their impact on the duration problem, because one of the sort of underlying imperatives for the new system, or in general, is to make the office more efficient wherever possible.

Mr. Bell: Can I just finish information requests and complaints closed before we do that? That is the second column of figures, members of the committee, on page two of this document. These are information requests involving complaints closed wherein files were opened. Is that correct?

Mr. Bottin: Are you speaking to nine?

Mr. Bell: No, I am still on table five, page two, second set of figures: information requests, complaints closed. These are ones wherein files were opened?

Mr. Bottin: Yes.

Mr. Bell: And do we take it that with the new procedures



this will have an effect of decreasing these numbers in future years?

Mr. Bottin: Yes, as the synopsis reflects.

Mr. Bell: As a matter of fact, it may put this column out of existence.

Mr. Bottin: Not quite. Again, Mr. Bell, because under our present arrangements in the legal directorate, if a person writes in with what amounts to an information request and we can't get them because we decide we do not want to phone them at work, then we are going to be writing them back and it will be an information request. But the impact is there. If you look at page three, keeping in mind again further expansion to the no-followup procedure, the drop is from 608 to 460.

Mr. Goodman: Are you referring to page three--

Mr. Bottin: Of the synopsis.

Mr. Bell: Right.

Mr. Bottin: So you can see that trend that you brought out. But to say it was going to go to zero, I think really doesn't get to the other point I was making.

Mr. Bell: In any event, this is the category of work that your office does that involves the least involvement, I venture to say; it is an information request.

You are still showing a general average duration of 89 days. We have heard one reason for it; sometimes somebody will call and you open a file and you are unable, for whatever reason, to communicate with that person on a follow up and that extends your duration. What percentage of this 460 does that--

Mr. Bottin: Again, I am not the person to speak to it as it would relate to individual cases. That really is the substantive side of it. The best examples I think would come through Mr. Zacks and his research staff. All I can say is, the easy matters have been handled in the course of that interview and flow to the no-followup statistics which, of course, are in the thousands. So these other matters, looking at the legal directorate: 124--

Mr. Bell: Special services as well; we have got correctional and psychiatric services. For all of the reasons, CAPS is unique and ought to be dealt with uniquely because of its clientele. But the other two, representing 152 and 124 respectively, that is over 60 per cent of the total. You have a duration of 71 days for special services and 50 for legal services.

Mr. Bottin: One point I will raise in interpreting the numbers especially as it relates to next year: You would expect to see far fewer in special services, because that end of things is now being handled by the legal directorate.

Mr. Bell: It is?

Mr. Bottin: You will recall the other day I spoke of the general investigations, that they are isolated now on jurisdictional matters.

Mr. Goodman: I should perhaps make the point that it is unfortunate that we cannot compare year-to-year statistics because of these changes we have instituted, but recognize that the whole purpose of the Ombudsman introducing such matters as no-followup complaints is to improve the efficiency of the office. I know that it makes it difficult to compare statistics, but I assure you that it is not done for that reason. It is done to improve the effectiveness of the office, both from a time and a cost point of view.

Mr. Bottin: I might add to Mr. Goodman's point that the questions we are hearing today are the questions that are being raised internally in the office from time to time.

Mr. Bell: I do not have any further questions on duration. I want to get into two more items briefly: The matter on page four, the statistics referable to those cases that were not resolved; and, lastly, the additional information we asked from Mr. Bottin and Mr. Mills, workload and aggregate employees.

Mr. Bottin, you mentioned that you thought some explanation of your present procedures might assist the committee in understanding the efforts your office has undertaken to become more efficient in terms of duration and file processing.

Mr. Bottin: Given your first remarks, it would be better now to finish consideration as to matters not resolved. I can speak to what will be coming available to the committee in the form of documents that are now being worked on, but are not yet here. From there I would like to talk about the new systems, not current systems.

Mr. Bell: Dealing with these not-resolved issues found on page four, we know now that your in-progress files decreased by 1,080 and that the number of files closed increased by 428, when we further discussed the question of the decrease in file closings and that which it is related to.

Perhaps a followup on a matter raised by one of the members of the committee yesterday as to possible explanations in addition to those already given for the decrease: I am wondering, Mr. Bottin and others right up front, of the additional numbers, both in the aggregate and broken down by categories, of the number of cases wherein the complainants, for whatever reason, decided they no longer wished the services of your office, those numbers might in some way be part of the explanation why your decrease in workload, files in progress and files open, is occurring.

12 noon

Mr. Goodman: That may offer some explanation. One of the reasons for the dramatic increase in abandoned complaints is the



introduction of the administrative fairness procedure. You will recall that either a telephone call or, in most instances, a letter is sent to the complainant at the conclusion of the investigation to that point before the Ombudsman's report, setting forth the board or ministry's position and asking for the complainant's representations.

It is often the case that we never receive a response to that, even despite repeated letters to the complainant. He just chooses not to pursue it, because--well, who knows why? Either he has no answer or he feels it is not worth pursuing. I don't know, but that is one example. That accounts for a large increase.

Mr. Bell: Of which number?

Mr. Goodman: From the 415 to the 734 on page four.

Mr. Bell: You must have some internal process whereby, at some point, you deem the file to be abandoned.

Mr. Goodman: That's right.

Mr. Bell: What period of time is that?

Mr. Goodman: That varies from file to file. For instance, a complainant may write and say he is on vacation, or we may find subsequently that a complainant is on vacation. There is no special time within which--

Mr. Bell: Let's put it in a general category. Now you inform the complainant of the position taken by the governmental organization in respect to his complaint.

Mr. Goodman: Yes, in the event that the complaint proceeds.

Mr. Bell: In the event that it proceeds to investigation; you inform him of the substance of that and you ask for--

Mr. Goodman: Comments.

Mr. Bell: --comments or whatever. Those files wherein you receive no communication from the complainant after a period of time you deem abandoned.

Ms. Bohnen: It happens at two stages, and that is why the number of abandoned complaints has gone up.

When we receive the reply to the 19-1 letter, that is the first time at which the ministry's position is explained to him. If the complainant does not respond to the letter, then most likely within, say, approximately two weeks another letter will go out to him saying: "We haven't heard from you. If we don't hear from you within another three weeks, we will assume you are not interested in pursuing it." At that point you are talking about perhaps five weeks. If he is interested in pursuing it, obviously the investigation proceeds.

At the end of the fact-gathering portion of the investigation, all the material is put to him or her. They are asked if they have anything they want to say in response to refute it. At that stage again, some people do not bother to reply. We will wait perhaps two weeks. If we do not get a response, then we will write to them again saying, "If we don't hear from you in three weeks, we will assume you are not interested."

In general, you are usually talking overall about a period of about five weeks before we deem it to be abandoned.

Mr. Goodman: That is not to say that cannot be reversed if the complainant comes back to us and says: "I am sorry; I was out of the country. I just got your letter." That happens and we reopen.

Mr. Bottin: Mr. Macerollo has made a point to me also that, in his situation, a number of times you will find the letter is simply returned with no current address.

Mr. Bell: But that is not going to help us with an analysis of why the numbers have gone up, because that would apply to every year.

Mr. Bottin: Yes, that's neutral in that respect.

Mr. Bell: Was there any analysis or any assessment made as to why the numbers of withdrawn have jumped 109?

Mr. Bottin: No.

Mr. Goodman: I am not aware of any analysis that was done.

Mr. Bottin: Keep in mind, I say that, Mr. Bell, because remember it is the complainant who has told us he does not want us to further pursue it in order for it to be a withdrawn complaint. We have no control over that.

Mr. Goodman: I can offer some reasons for that being a fluctuating figure from year to year. Included in withdrawn complaints are complaints that are withdrawn because they have been resolved through other means by the complainant. So he writes us and says: "I have retained a lawyer. He has succeeded in negotiating a settlement; so I am withdrawing my complaint."

As you know, very often the Ombudsman will be only one of many organizations the complainant approaches. He may go to his union. He may go to another organization to which he belongs. He may speak to his MPP or his MP. He may consult a lawyer. During the course of the investigation, he may tell us he has succeeded in resolving the matter and he is withdrawing.

Mr. Bell: You have already told us about the "refuse to investigate or further investigate" and reasons why that number may have increased. And "recommendation denied": If you take that 135 of the Workmen's Compensation Board, you've got a decrease instead of an increase.



Mr. Goodman: That's right. You can look at it that way.  
Yes.

Mr. Bell: Please forgive this, but I guess I like working with numbers. If I add the difference between the years, the figures shown under "abandoned," "withdrawn," "refuse to investigate" and "recommendation denied," I come to 646.

Mr. Goodman: You are adding 734--no, you couldn't--

Mr. Bell: No. I am subtracting one from the other and adding the differences.

Mr. Bottin: Gosh. They're each an independent category--

Mr. Bell: I appreciate that. The fact that there were 645 jurisdictional additional complaints closed this year is no (inaudible)--

Mr. Bottin: Mr. Bell, that's not a correct conclusion, because, of course, abandonments and withdrawn matters can be nonjurisdictional complaints as well, and in fact are in fairly high numbers.

Mr. Bell: They are?

Mr. Bottin: Sure. Linda, for instance, has spoken to her area, which happens to handle jurisdictional complaints. But there are a number in the legal directorate, and some before we have made a jurisdictional determination, I might add. Nor do recommendations denied, of course; those are solely jurisdictional complaints.

Mr. Bell: I have no further questions on "duration" or "not resolved," Mr. Chairman.

The next item would be a return to the analysis or information respecting your investigative staff by numbers and workload by numbers for the fiscal years we have discussed.

Members of the committee will recall that yesterday afternoon a request was made to provide the figures on investigators for fiscal year endings as opposed to calendar year endings and to compare those with the in-progress files shown for, again, each of the year endings. Mr. Bottin, do you have that information available?

Mr. Bottin: Mr. Bell, I have left a handout with the clerk, Mr. White, that is headed "Table Three: In-Progress Files by Jurisdictional Category." I'm not sure whether that is in the hands of the members at this point. It should come around right now, though, in order for us to discuss this area.

Mr. Goodman: I'm sorry. Were you referring, Mr. Bell, to statistical information regarding investigators at year-end? Is that--

Mr. Bottin: There are two matters. There is the material

that have I turned over to the clerk, and there is the material that Mr. Mills has brought up today.

Mr. Bell: Right. If we could have all of that material placed before the members before we start--

Mr. Bottin: No, I'm sorry. None of it was distributed yesterday.

Mr. Goodman: The one distributed yesterday, you will recall, Mr. Chairman, was calendar years. Mr. Bell asked for fiscal years, and that was distributed this morning.

Mr. Bell: Members of the committee, if you have that in front of you, while Mr. White is distributing the second document, which will deal with workload by fiscal year and broken down, Mr. Mills, can you confirm that the number of investigators shown here, permanent and contract, for each of the years represents all of the people in the office who were involved in the investigation of matters arising out of files, be they nonjurisdictional or jurisdictional or information requests?

Mr. Goodman: He's not in a position to answer that; I am.

Mr. Bell: Whoever is.

12:10 p.m.

Mr. Goodman: The answer to that is no, because there are certain matters that are investigated in legal services: for instance, complaints where the sole allegation is that the ministry acted contrary to law or made a mistake of law. There are some investigations conducted within legal services.

Mr. Bell: Should we then supplement this number by those people?

Mr. Goodman: I don't know how meaningful that would be, because that number varies from year to year and it varies from lawyer to lawyer, articling student to articling student and director to assistant director.

Mr. Bell: If it represents less than five per cent of your workload in any one year, I don't think it would be meaningful.

Mr. Bottin: Well, Mr. Bell, it's not five per cent, of course, because the research group in our office is handling high volumes of nonjurisdictional complaints, and those researchers are not identified as investigators on that material.

What you can do with the handout material I am providing is to isolate the jurisdictional complaints, which by and large are handled by the investigators, as identified on that document.

Mr. Goodman: In other words, you can compare the specific directorates listed with the number of complaints investigated in that directorate. But we have not included legal;



my understanding was that it wasn't requested. But it really would not provide you with that much assistance.

Mr. Bell: Okay. Mr. Bottin, the document that the clerk has just handed out, five pages in length--the first page is headed "Table Three"--I take it is from the very same document that we discussed--

Mr. Bottin: By way of closed files.

Mr. Bell: By way of closed files--table five. This is the working tool that Mr. Morand and the office--

Mr. Bottin: Except that I have worked back through anything that was available to me that would give you the information that you asked for the other day; so if I can proceed through it page by page--

Mr. Bell: No. But it's all from the same--

Mr. Bottin: No. It is not.

Mr. Bell: Oh. It's not?

Mr. Bottin: The first page happens to be; the second page is from an earlier report of the same type; the third page is from an even earlier report, somewhat differently formatted; and the last two pages are from earlier annual reports. But what you will find is continuity of information in terms of in-progress files running from May 1975 all the way up to March 31, 1981, with some overlap, obviously.

Mr. Philip: Before we start dealing with these two documents, Mr. Chairman, would you have them tabled and labelled? I believe it's G and H that we're up to now.

Mr. Bell: May the document dated September 9, 1981, be G?

Mr. Chairman: Have all the members noted that?

Mr. Bell: Can the five-page document, first page headed "Table Three," be H?

Mr. Bottin, the exercise that we are going through is simply to examine for each of the fiscal year endings, against the number of investigative staff, the number of in-process files which would involve that investigative staff. With that preamble, could you just assist us to place that number in each of these fiscal year columns in document G?

Mr. Bottin: Again, Mr. Bell, I would prefer not to speak to document G, because I wasn't a party to its preparation.

Mr. Bell: I'm not asking you to comment on its preparation. I am just asking you--

Mr. Bottin: Or its content.

Mr. Bell: --to extract from H the number of in-process files that require these investigators. Do you see what we are getting at?

Mr. Bottin: Yes. Of course.

Mr. Bell: That's the exercise.

Mr. Bottin: Certainly the information I provided you will not quite do that as we get way back into the history of the office while we were setting up new systems and that kind of thing. So we will run into problems as we get further back. But, anyway, general investigations: Again, the preponderance of staff in that area have been called investigators; so if you look at all the files that were in progress in March 1979 you will see that reflected there. You will notice that there were two dates in 1979-80--

Mr. Bell: Where? Hold on. You are at page one?

Mr. Bottin: Page one: "General investigations, all files." So we can cover a number of years--

Mr. Van Horne: Mr. Chairman, I am not even sure where the hell I am, because there is mass confusion around here.

Mr. Bell: Yes. Could you do it chronologically? The document we have, G, starts March 31, 1976.

Mr. Bottin: Let's work from the present back, because that's the order I have to assemble the sheets in. So if we start from the right-hand side of the page, then, from March 1981--

Mr. Bell: Just before we get that, members of the committee, what we are doing is, from the document that is labelled H, trying to obtain information for each of the years as to the number of files within that office that required the services of the investigative staff and to break them down as they are in the document labelled G.

What I am going to do, and I would suggest that you do it as well, is to write these numbers in the right-hand column or the right-hand side of G somewhere while Mr. Bottin gives them to us for the years in question. Do you follow that, Mr. Bottin?

Mr. Bottin: Not quite, Mr. Bell, because the numbers I am giving you are the numbers on the document.

Mr. Chairman: I am going to call for a break here. We will be back at two o'clock, and perhaps the two of you can get this resolved in the break.

The committee recessed at 12:15 p.m.





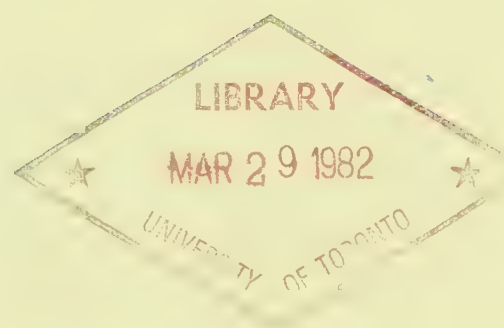
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SELECT COMMITTEE ON THE OMBUDSMAN

OMBUDSMAN'S EIGHTH REPORT

THURSDAY, SEPTEMBER 10, 1981

Afternoon sitting





SELECT COMMITTEE ON THE OMBUDSMAN

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Kells, M. C. (Humber PC)  
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Philip, E. T. (Etobicoke NDP)  
Shymko, Y. R. (High Park-Swansea PC)  
Van Horne, R. G. (London North L)

Clerk: White, G.

Counsel: Bell, J.

From the Office of the Ombudsman:

Bohnen, L., Director of General Investigations  
Bottin, K., Co-ordinator of Systems Development  
Catton, N., Assistant Director of Special Services  
Goodman, B., Counsel and Special Adviser to the Ombudsman  
Zacks, M., Director of Legal Services and Complaint Policy

## SELECT COMMITTEE ON THE OMBUDSMAN

Thursday, September 10, 1981

The committee resumed at 2:14 p.m. in room No. 228.

OMBUDSMAN'S EIGHTH REPORT  
(continued)

Mr. Chairman: Since there is already a precedent in this sort of situation, I think we will get under way and call the committee to order. I believe Keith and John have reached some kind of a resolution in terms of the statistics and I will turn it over to John.

Mr. Bell: We can cut through this. Over the noon hour you have summarized on document G the work load figures from document H and the clerk has redistributed G to all members of the committee with those figures on it. The figures will speak for themselves for the years in question. Would you just highlight what they indicate, et cetera?

Mr. Bottin: It is my feeling when you examine the numbers, and again I did not prepare the total employees count but overall there certainly was an increase in our in-progress work load in certain directorates, dramatic increases in special services, especially looking at March 31, 1980, with 748 in special services and on March 31, 1979, the year before, it is 480. So you can see there is an upward trend and, of course, through that period there was an upward trend throughout the entire office.

The total employees, as worked out on this table, peaked at the same time as our total in-progress figure peaked. In other words, the global figure was 2,714 and you see large numbers of those in-progress figures in two directorates, namely special services and correctional and psychiatric services. Those are the two areas we discussed earlier as being the ones that accomplished in a sense, in volume terms at least, the most towards reducing their in-progress backlog and to that extent the office's in-progress backlog.

If you examine general investigations you don't see the same thing to the same degree. But on the other hand that is an area that wasn't open to the kinds of solutions, if you want to call them that, that were open in these other areas or to the same degree, or there wouldn't have been the same reason to apply the same techniques, let us put it that way.

Mr. Bell: To make the record complete, the figures that you have transposed on item G represent the files closed during the periods in question. Is that correct?

Mr. Bottin: No, that is not correct, Mr. Bell. The information is how many files were in progress at March 31 for each of those years. I took it from document H.



Mr. Bell: Okay. That is even better. It is an accurate or appropriate comparison of investigative staff to work load in progress.

Mr. Bottin: Yes.

Mr. Bell: All right. With the exception of years 1976 and 1977, which we will have something to say about in a minute, you say these figures demonstrate that as your in-progress work load increased, there is a corresponding increase in the number of investigative staff for comparable periods of time.

Mr. Bottin: At a point in time you will see that the contract figure of 21 is higher than it is--we are speaking of March 31, 1980; you will see it peaked at that point. Basically the permanent complement of the office is not much different through the last four years. So that did not change. Our contract staff did go up coincidental with the peaking of the in-progress figure at 2,714 globally.

In the WCB special project you will see one permanent staff member was assigned there and three contract people. Then there would be other contract people in other areas of the office, perhaps to carry some of the load--I am not sure of this absolutely--that was distributed from special services. Keep in mind that special services now focuses solely on jurisdictional matters, whereas earlier on in some of these years they did not.

We stayed on a permanent staff side within our complement limits and the figures have stayed reasonably stable there. There were some additional contract staff hired at the peak.

Mr. Bell: Looking at the figures for fiscal 1981 at the second page, it shows, as you have pointed out, a dramatic decrease in the number of in-progress files under special services, from 748 to 485.

Mr. Bottin: Decrease.

Mr. Bell: That is what I said, decrease. Mr. Morand mentioned yesterday that as of the end of June that figure had further dropped to 350? Miss Catton is nodding in the affirmative.

Mr. Bottin: Just hang on. I have the figure here as of the end of June. Special services, 430.

Mr. Bell: Okay. Can you assist us Ms. Catton where Mr. Morand got that 350 figure from yesterday?

Ms. Catton: That 430 figure includes community and social service complaints and that area in our directorate was transferred to general investigations around July 1.

Mr. Bell: He was speaking only to the Workmen's Compensation Board?

Ms. Catton: That's right.

2:20 p.m.

Mr. Bell: May we take it that of the 485 as of the end of March, approximately 350 would be Workmen's Compensation Board cases?

Ms. Catton: Say 350 to 370.

Mr. Bell: Mr. Morand further stated yesterday that he expected that figure, as far as Workmen's Compensation Board is concerned, to drop by another 100 down to 250.

Ms. Catton: That's correct.

Mr. Bell: If that is the case, Mr. Bottin, we can expect, come fiscal year March 1982, to see a further decrease in the number of in-progress files under that category.

Mr. Goodman: Just for the record, he said that he hoped rather than expected.

Mr. Bell: It is not etched in stone, we understand that. We are looking to expectations.

Mr. Goodman: There's one point I haven't mentioned that ties in with the program that we prepared for you when you visited our offices that is worthy of mentioning. We hope for there to be some improvement simply because for two months of the last fiscal year we were in the process of moving and that created tremendous disruptions during half of January and February and March. We moved at a time when the premises were not completely ready for us and there were file transfers and everything that is coincident with a move.

Mr. Bottin: Specific to my area, Mr. Bell, we examined the mail to determine whether there were any important matters there, especially in CAPS, for instance, whether there was someone who was alleging he had been assaulted and that kind of thing. Otherwise, the mail was held up for a number of days pending the setup of the records room and everything else.

Mr. Bell: Is that called noise?

Mr. Bottin: Noise?

Mr. Bell: In terms of data processing.

Mr. Bottin: As in static?

Mr. Bell: Yes.

Mr. Bottin: I didn't feel so.

Mr. Bell: Okay. The point is--and statistical information notwithstanding; I am really following upon Mr. Cooke's comments at your office the other day--for all of the reasons, one gets a sense that it is taking perhaps longer than even your office believes it should take to process files,



jurisdictional core work files. I am not addressing that at you, Mr. Bottin, I am just addressing it to everybody concerned.

The committee has, historically and in the last three days, heard from various members of the staff as to the ways in which you are dealing with that phenomenon. From what you heard from the committee, you can anticipate 12 months from now that to the extent the statistics demonstrate increasing trends or trends continuing along the lines we have seen, the areas of inquiry will be the same, perhaps in some more detail.

Members of the committee, I sensed and I think rightly so on your part this morning, a concern as to why it was necessary to go into all of these statistics. It is really a product of the work your colleagues did in the last Parliament and comments they made in the eighth report by saying they were concerned with the work load and duration and they were going to discuss and examine it in detail with the Ombudsman's office come its next hearings, meaning today. The process is really to hopefully fully understand what those statistics mean, what those trends may indicate, and know from your office exactly what is being done about it. Speaking for myself, I think we have received a very full and fair explanation. I don't have any further questions on this part.

Mr. Goodman: Mr. Bell, I know that Mr. Morand welcomed the opportunity in his annual report and in our presentation before you to outline first of all some of the management instruments that he uses to keep him apprised as to the status of files both closed and in progress and some of the system that we have implemented to improve our efficiency, both in terms of time and cost, without compromising our thoroughness.

That is very important. A lot of the matters we have talked about as to why the stats are as high as they are, for instance, administrative fairness, you can see play a part in the average duration but are absolutely essential for us to perform our job properly. If the Ombudsman is going to investigate allegations of unfairness then he has to be a paragon of fairness himself. Of course, the committee has recognized that in dealing with section 19(3) of the Ombudsman Act.

Mr. Bell: I lied, I have two more questions. Ms. Bohnen, do you feel that you have an adequate number of investigators to cope with the current work load?

Ms. Bohnen: No. We are attempting to recruit two additional investigators at the moment. We are also taking steps--

Mr. Van Horne: Excuse me, when you say you are attempting, how do you attempt? Through advertising or what?

Ms. Bohnen: We already had received a number of applications from people so the first step was to review those applications.

Mr. Van Horne: Budget isn't a problem?

Ms. Bohnen: No, it is not, not in relation to hiring

these two. It is just a question of interviewing and selecting. So we are hiring two more investigators for the directorate and we are also actively taking steps to improve the efficiency in some respects. One of the problems is report and document drafting and we are working on improving the current staff's abilities in those areas.

Mr. Van Horne: What are the basic qualifications? How does the ad read?

Ms. Bohnen: We have not run an ad for the vacancies. We have done so in the past and have been literally deluged with hundreds of not terribly well qualified applicants. At the moment, we are pretty specific on what our requirements are, although if we get somebody who is wonderful with different qualifications we would certainly consider them. It is no secret to say that what we would like to be able to hire right now is someone with police experience.

Mr. Van Horne: I'm sorry, with what?

Ms. Bohnen: Someone who has worked as a police officer in the past. We are also considering hiring a lawyer to work as an investigator.

Mr. Goodman: Perhaps I should explain that--

Mr. Van Horne: Are there any applications from Tillsonburg?

Ms. Bohnen: Not too many.

Mr. Goodman: I should explain it because it is a good question. You see, our investigators at any one time depend to a large extent on the nature of investigations in the office. For instance, one of the problems we were faced with is that Ed Singleton--whom John and Mr. Miller will remember--who was a very important member of our staff was offered a position by Mr. Sidney Linden, the police complaints commissioner, which he took.

All the Re-Mor complaints were being investigated by him, so there then became a need for someone with similar experience to take over those files, because a police background for that type of file is very important. That is why the nature of the files we have at any one time will dictate what kind of investigator we need. That started with Mr. Maloney. There is no point in hiring 10 people with environmental experience if your caseload is workmen's compensation and correctional institutions.

Mr. Philip: You have those two positions in your present fiscal budget. Is that correct?

Ms. Bohnen: That's correct. The reason I have the vacancies basically is because two people left recently.

Mr. Philip: So all you are doing is replacing, you are not adding.



Ms. Bohnen: Yes.

Mr. Bell: If, as and when you fill the position, then will you have enough investigators to cope with current work load?

Ms. Bohnen: It depends on how Mr. Morand and I see--

Mr. Bell: What I mean by cope--but I think I will let you put your definition on coping with work load, maintaining a standard of performance in terms of time and quality which your office has developed.

Ms. Bohnen: Yes. With the addition of two new investigators and if I can count on replacing any additional departures that may take place, which I think I can count on, we can keep up with the quality and quantity which we now deal with and now manage. I don't think we could expect to dramatically improve our output.

Mr. Bell: By the terms of duration.

Ms. Bohnen: In terms of duration, I don't think we could.

2:30 p.m.

Mr. Philip: We have just been told in earlier testimony that in economically bad times the caseload increase and, indeed, in the first quarter of this year, there seems to be an increase in case load. How can you say that you are going to keep the quality while the work load is apparently on an upswing at the present time?

Ms. Bohnen: First, we have to break down where the upswing is going to be. I can't remember whether we were told it was in CAPS, DSS or where. While there may be an upswing in the social policy fields included in general investigations, if the government is serious about backing out of some consumer protection programs and rent review, there will be a corresponding drop.

Mr. Cooke: That is not going to happen that quickly. Government doesn't move that quickly.

Ms. Bohnen: I think we can cope at the level we are coping with now with the additional staff. If we do receive large numbers of additional complaints, either in one area or several areas, then I will have to go to Mr. Morand and tell him I need more staff.

I have the advantage. All the files I get are in legal for a couple of months before I get them, so I do have some time to react. I think we can cope, but I certainly would not promise you any marked improvement in duration or productivity with the staff I expect to get.

Mr. Philip: You have had no indication from the government that there will be a reduction in any particular department and therefore that you can expect a reduction somewhere?

Ms. Bohnen: No; just what I read in the papers.

Mr. Goodman: As Mr. Cooke points out, it would take some time before we felt that in our office. It's very hard. Ms. Bohnen can tell you today that she can cope, but if tomorrow, as happened a couple of weeks ago, we get a very large complaint involving a number of people and a number of complex issues, then that puts an entirely different light on the situation.

In one week we received--these are publicized complaints so I can state them--a very large complaint from the board of, I think it was osteopaths, and a very large complaint from the Business and Tourist Association of Kleinberg respecting the McMichael collection, which was urgent because of a projected October closing. As you can imagine, these things change from day to day depending upon the case load coming in and the type of cases.

Mr. Philip: You would be aware at the moment, then, of any large complaints that have come in the last couple of months?

Ms. Bohnen: Yes.

Mr. Philip: And you are in a position to talk about the complaints in a general way without talking about specific individuals who may have launched the complaint?

Ms. Bohnen: Yes.

Mr. Philip: Has there been any complaint lodged by anyone against the Ministry of Health concerning urea-formaldehyde insulation?

Mr. Zacks: No.

Mr. Goodman: Mr. Zacks is indicating no, and since he is director--

Mr. Philip: You had better keep an eye out. There may be another large complaint coming in.

Mr. Zacks: I see a large number of complaints coming in from the--

Mr. Chairman: Could you speak into the microphone, please?

Mr. Zacks: In this morning's Globe and Mail there was an article about the Ministry of Consumer and Commercial Relations taking an active role in the interest charged by banks. We can see a large number of complaints, perhaps, in that area depending on how that ministry deals with it. It's a possibility there could be hundreds of complaints.

Mr. Philip: I'm sorry, I missed that, Mr. Zacks.

Mr. Zacks: There was an article in this morning's Globe that the Ministry of Consumer and Commercial Relations would be



taking a more active role in dealing with the public with respect to complaints by the public against banks concerning interest charges that were not made known to the credit card holders during the recent mail strike. I can see a large amount of complaints coming in in that area.

There may not be any complaints, or there may be hundreds of complaints. It just depends on whether groups form and whether someone takes action and a snowball effect occurs. It's hard to predict.

Mr. Philip: I don't want to prolong this, but while you are at the microphone, there is the latest move by the ministry, which has not been announced publicly but was admitted after I had announced it, that they are going to centralize rent review offices.

Can you see people in, say, Thunder Bay, filing a complaint that they have trouble getting to a rent review office because it is a considerable cost to them to travel to Sudbury, for example, to protect their rights under the rent review act?

Mr. Zacks: We have had complaints of a similar nature, not dealing with that specific organization, concerning the difficulty of getting to certain areas on public roads. It is conceivable, sure. We get all kinds of complaints.

I don't mean to be facetious, but anything is possible. People will complain about everything. If a certain program is instituted or another program is halted, as Mr. Morand indicated the other day, we could be literally deluged with complaints.

I reference the home buyers' grant situation. Another situation was with the cottages, and where people were renting land from the Ministry of Natural Resources. We have had a large amount of complaints concerning that program and a buy-back policy that the Ministry of Natural Resources was instituting. I believe we got 80 or so complaints.

Mr. Goodman: Of course, the converse is also true. For example, if steps are taken to reduce some of the perceived unfairness by, for instance, substantial amendment to the Workmen's Compensation Act as a result of the Weiler report or, as I read in the editorial in the Toronto Star last night, if the distinction between disabled and permanently unemployable is removed, there may be a concomitant decline in the number of complaints made to the Ombudsman in the first place.

Mr. Philip: I guess where I am headed, and I think the point that I may have made with those two examples, is that the reduction of a service may actually result in an increased case load rather than a decrease in the case load.

Mr. Zacks: It's entirely possible. I just cannot predict it.

Mr. Bell: What it sounds like to me, Ms. Bohnen, is that you are currently vulnerable to your duration increasing.

Ms. Bohnen: I don't have people sitting at their desks doing crossword puzzles, waiting for new complaints to come in.

Mr. Bell: Nor do you have anybody sitting at a desk or anywhere else who has an ability to take on more than they are doing at present.

Ms. Bohnen: At any given point during the month, there may well be an investigator who can handle a couple more complaints because, just by coincidence, a couple of complainants fade out of the picture for some reason. But that is fairly small potatoes; you are right. If I got 100 new complaints next week from, say, two new programs or two new cutbacks, you are right; I would have to scurry around to find an investigator to take care of them.

Mr. Bell: When my firm decides whether we have to hire any new lawyers, we assess whether the lawyers currently in the office are working to full capacity. I take it from your answers that your people are working to full capacity.

Ms. Bohnen: If full employment still gives you three or four per cent unemployment, I think full investigator capacity is probably something like 95 per cent. There are always going to be a couple of investigators who can take on one or two more files in any day, but by and large they are fully occupied.

Mr. Philip: But you only have budget elasticity for another two positions; namely, the two positions that you have not filled. Is that correct? So, if this onslaught of extra case work does come, you have nothing in your present budget that would allow for that margin.

Ms. Bohnen: My directorate budget certainly is a formally written document, but it's not carved in stone. I am not aware of money in other places of the office, but if that were to arise and I felt I needed an additional investigator and I didn't have the money for it, nothing at all would stop me from going to Mr. Morand or Frank McArdle and saying, "You have got to give me another investigator."

As has happened in the past, they are in a position to take money out of some other part of the office budget where it is sitting and give it to me. The fact that I don't have a budgeted amount for a third or fourth investigator will not absolutely prohibit me from hiring an additional person if I can justify it.

Mr. Philip: But we have heard to date that new procedures have been devised which have saved considerable money in secretarial staff; the use of the latest in office technology, if you like. From your knowledge of the total operation, do you feel there is enough slack in there that Mr. Morand could come up with an extra two or three salaries, if that were needed?

Mr. Bohnen: I am really not in a position to answer that. I am responsible for my directorate and money within my directorate, but overall--perhaps Brian can answer it.



2:40 p.m.

Mr. Goodman: I can't either, other than to say that, as I understand it, there is a global amount for salaries and benefits and it is up to Mr. Morand to determine where that is allocated in the office. But the committee has made the point in the past, and perhaps this is what Mr. Bell was going to say, that the committee is going to look with alarm at a situation where one directorate has an overload and another directorate has an underload; and that we should, notwithstanding our organization and directorates, look to transferring people, making them transferable.

We have done that in the office in terms of the salary and wage schedule. We have not said, "This particular investigator, because of the nature of the work he does, is worth \$5,000 more," for exactly the reason you suggest; because they should be transferable. Many of our investigators have worked in other directorates in the office and have transferred from directorate to directorate, not only because after a while you get stale and need some new challenges, but because Mr. Morand has decided that is where we need the manpower.

Mr. Philip: Is the majority of your staff covered under some kind of collective agreement?

Mr. Goodman: No. Our staff has been given no bargaining rights by any labour relations tribunal.

Mr. Philip: What happens, then? Is it not possible that at some point in one particular section, you are going to have to pay a higher salary? I know this happens in other departments; that you simply cannot transfer because one of the problems is that in order to get the kinds of skills you want, you have to go into the market and perhaps pay \$10,000 more than what somebody doing the same kind of work, but with a slightly different skill, is available for in a division that is equal on your management chart.

Mr. Goodman: I don't want to leave the impression that all investigators get X dollars. That is not the case. There is a salary range for investigators, and it is up to Mr. Morand to determine where that investigator should be placed; and it is quite a broad range, so that we are able to attract people with certain experience, skills and talents and pay them a competitive rate.

Mr. Cooke: How long have these positions been unfilled?

Ms. Bohnen: It is difficult to answer because there has been movement within the office. It is not always possible to say where the vacancy was at any given point. Two investigators--

Mr. Cooke: What is your complement now? What are you operating with now?

Ms. Bohnen: At the moment, as I said yesterday, we have 14 full-time investigators and two half-time investigators.

Mr. Cooke: That is one full-time equivalent.

Ms. Bohnen: Right. As a matter of interest, we always have, in addition, the services of one articling student--not always the same articling student--and we have had co-op students from Waterloo.

Mr. Cooke: So, your complement could go up to 16, plus one full-time equivalent?

Mr. Bell: It was 17 last year.

Ms. Bohnen: Yes. That is what it will go up to as soon as we hire the people. Two investigators left in the early part of the summer. We had an internal competition and one person moved up from another part of the office.

Mr. Cooke: I am just looking--on March 31, it was 13 and one.

Ms. Bohnen: Sorry?

Mr. Cooke: On March 31, it was 13 and one; right?

Mr. Bottin: Mr. Chairman, these are figures of actual bodies there, not the complement allocated.

Ms. Bohnen: Also, beginning in the summer, we took over responsibility for Community and Social Services complaints. We took over, with that responsibility, one of their investigators. There has been sufficient movement within the office that it is not easy for me to say how long we have had those two vacancies. I have been trying to find two people to take on for the past month or so, and I have been actively interviewing people.

Mr. Cooke: What does the 13 and one mean?

Mr. Bottin: I have just had an eyeball confirmation of my previous statement--

Mr. Cooke: I have never seen so many charts in any organization in estimates that I have been involved in that have numbers that mean so many different things on different charts.

Mr. Bottin: It is the same information, just cut in different directions.

Mr. Cooke: It is easier to follow estimates of the entire ministry than it seems to be to follow this particular operation with 100 and some employees.

Mr. Bottin: Keep in mind that the charts that we submitted were the charts specific to the member's question as it arose the other day, and that the information was extracted from what are otherwise standard government reports.

Mr. Cooke: It says here, "fiscal year ending March 31, 1981, investigators permanent and contract, general investigations, 13 and one."



Mr. Goodman: How many were working there on March 31?

Mr. Cooke: That is exactly what I said. On March 31 you had 14, 13 plus one.

Ms. Bohnen: Exactly.

Mr. Cooke: But your complement is 16 plus one.

Ms. Bohnen: Well, today my complement is 16 plus one because Mr. Morand said, "Yes, go ahead and hire two additional people."

Mr. Bell: But your actual is 14?

Ms. Bohnen: Oh, yes. I have 14 people on staff today.

Mr. Bell: Plus one.

Ms. Bohnen: Plus two halves; one, yes.

Mr. Cooke: All I am trying to get at is how long you have been looking for these two people.

Ms. Bohnen: About a month.

Mr. Bottin: I do not want to burden this presentation with more paperwork, but there is one other series of documents that were turned over to the clerk that pertain to our new system. I would like to touch on it as I end.

Mr. Bell: Mr. Bottin, Mr. McArdle yesterday gave us an overview and a brief introduction and I really ask you to highlight these.

Mr. Bottin: It will be very brief and I will make the points generally, without referring to the documents. Your review of the document entitled Implementation Design for the New In-Progress System, if you examine the status category information, and keep in mind this is an ongoing, day-to-day system, not a system that collects information monthly or every six months, such as our previous inventories, will allow for the status monitoring, location, who is working on it, textual comments, electronically at our fingertips at all times.

If you are concerned about duration, it seems to me it flows from that, that the concern we have ought to lead to a design of a system on the right kind of technology that allows everyone in the office, as it would apply to them, to get at the information specific either to groups of cases or single cases such that we know where we stand at all points along the way. This system allows for that.

It is an office information system to this extent. It is not just a word processing system that allows for timely document preparation; it is a system that integrates that with status categories such as where we issue a report pursuant to 22(3) or 19(1) letters or whatever.

That information is available on both sides so that, for instance, a complainant's name should never be retyped in order to issue a subsequent letter. It will simply be taken from the information side of the system, integrated with the letter that is being prepared at that time or whatever other form the document takes, and we should not be making typographical errors since we are not retyping.

We are using programs to draw this information in as it is required, and then, through the dictation in the office, updating the system. What we will have is point in time, day to day, hands-on feel for every case in the office.

Mr. Bell: Is it the information that flows from this system that forms the subject matter of your annual--I will call it a report--to Mr. Morand, which he uses as a working tool for discussion and consultation with the various directors?

Mr. Bottin: Keep in mind we are talking about a new system that has yet to be implemented. The implementation begins on or about September 30.

Mr. Bell: Next year then, next year's report that you make to Mr. Morand will--

Mr. Bottin: Mr. Bell, it is not correct because obviously we are midway through this year so that what I anticipate is to get the in-progress side, in other words, the ongoing day-to-day figures, under control through this system. The year following that the information will flow out of the new system.

Mr. Bell: Mr. Bottin, one of these years, somebody sitting in this chair and somebody sitting in that chair is going to be able to do year to year, and I do not mean that to be critical or facetious.

Mr. Bottin: Certainly. Not speaking to the history because we are halfway through the history at this point for this year, we will use the current system for next year's report, but what we will be able to do, as it is implemented in each directorate--and hopefully by early in the new calendar year we will have the entire office covered--we will be able to run continuously something that means something given the operational concerns that have been expressed here.

Mr. Bell: The goal of the system is to give you almost immediate information respecting the status of any one file.

Mr. Bottin: Day to day.

Mr. Bell: Day to day; correct? You will agree with me that system is only as good as those people who receive it and do something with it; correct?

Mr. Bottin: Ultimately, yes.

Mr. Bell: Have you finalized your procedures as to what



the Ombudsman's--I take it they will be senior people--will be doing with this information?

2:50 p.m.

Mr. Bottin: Mr. Bell, you will notice the design of the reports in the documents. Those reports would be used by investigators, senior staff, Mr. Morand and so on. It is not a question of one group of our staff using it; it is all staff using the system.

Mr. Bell: So it would be more appropriate a year from now to ask you and your colleagues what you did with it.

Mr. Bottin: Yes.

Mr. Bell: I did not ask Ms. Catton the same question I asked Ms. Bohnen. Is your investigative staff working to full capacity right now?

Ms. Catton: Yes.

Mr. Bell: You are therefore vulnerable to the duration of your files increasing to the extent that your work load increases.

Ms. Catton: That is correct. However, right now, we are decreasing our case load by about eight files per month on an ongoing basis. Given the proposed changes to the Workmen's Compensation Act, as I explained to the committee yesterday, probably a lag time in the new system coming in and appeals being forwarded--

Mr. Bell: I do not want to get into that. It has been my experience, when legislation changes that dramatically, you are going to get an increase across the board.

Ms. Catton: Except that we are going to have a lag time period when the cases will not have completed the appeal procedure before they can come to us, which means that we should be able to decrease the time period. We should be more current with our files.

Mr. Goodman: Do not forget that, because of the external review tribunal, there will be one more appeal before we have jurisdiction. That is what Ms. Catton is referring to. There would be that lag time before the appeal is taken to the external review tribunal and there is a decision rendered by that tribunal.

Mr. Philip: The recent Toronto building boom which invariably means that many semi-skilled people are hired on the job site who might not normally be hired and certain companies that are marginal get into the business as subcontractors and so forth.

It was so bad at one point two years ago carpenters were unemployed all over the place. They are actually putting up signs begging people to go in and work. How long will it take before the number of accidents--I find the construction site accidents are

the difficult ones; they are usually the back cases, the falls off scaffolds and ladders and all that kind of thing.

How long does it take before that gets into your system? Do you build that kind of specific, economic boom in a particular industry you know to be dangerous into your projections of staff? Are you at the point where you can say, "Here is what is happening in the building trades and that means that X number of months down the road or a year down the road we will end up with an increased case work up 20 per cent"?

Ms. Catton: Consistently, our case load in workmen's compensation, our intake has been the same since about 1976 in that we have between 23 and 28 jurisdictional files per month. The change in the economic circumstances does not seem to have affected that at all.

The one thing we have recently experienced is an increase in complaints from employers complaining that certain claims should not have been allowed and pursuing that to the appeal board level, and then coming to us because they are dissatisfied that the Workmen's Compensation Board had granted entitlement for certain accidents. That is the only real area where I can see the economic factors have really contributed to an increase in our work load, or to a change in our work load at all.

Mr. Goodman: That is another example, Mr. Philip, of the phenomenon you mentioned before. In times of tight dollars, you will get a different type of complaint. That is a fact. Employers' whose accident ratings would go up and therefore the assessment would go up in many instances if the claim was granted are now complaining to us that the board acted unfairly in granting the fellow benefits. It should not have done so.

Mr. Cooke: That has been a trend with more employers appealing in the last few years as well, I understand, all the way along.

Ms. Catton: It is interesting that it is the large employers across the province; it is not the smaller employers who are making those complaints.

Last year when there was the big strike at Inco, we expected a larger number of complaints. We did not get them. We were looking for them and expecting them. The increase in our intake was just not that much greater in the Sudbury area than it normally is.

Mr. Philip: That is very interesting. Thank you.

Mr. Chairman: Any further questions before we move on to the next item? Thank you, Mr. Bottin.

Mr. Bell: Thank you, Mr. Bottin. I am just sitting here thinking that three years ago nobody would have believed we would be asking you whether you thought you had enough people. The pendulum has indeed swung.



Mr. Chairman, may I make a suggestion. Trust me, the suggestion is designed, in the overall, to save us time these next two weeks. I do not have all the responses to the matters contained for today's agenda, being C, G and B(b), being various responses from ministries.

Rather than deal with them holus-bolus, leaving some to later, may I suggest that we take C, G and B(b) and put it to the afternoon of September 16, where you can see from the schedule we are only dealing with other business, rules for the guidance of the Ombudsman, and we can deal with that item right now because of the amendments the Ombudsman has provided the Attorney General (Mr. McMurtry) with and the incomplete process covered by that.

I cannot think of any rules during this go-around where we would considering with the Ombudsman in his office, unless they have any rules they would like to suggest to us. I can bet they do not.

Mr. Goodman: It may be that, should the Attorney General see fit to introduce the proposed amendments and the Legislature sees fit to pass them, it may render obsolete some of the rules--at least one--that have already been passed.

Mr. Bell: At least, yes.

Mr. Chairman: All right, let us do that. Any problem with that?

Mr. Shymko: With reference to the amendments to the Ombudsman Act, is there any reason why we do not have copies of those proposed amendments?

Mr. Bell: Mr. Shymko, I am going to deal with that now because I neglected to discuss that with Mr. Morand yesterday. I can give you some background. In August 1978, the committee with Mr. Maloney and a couple of lawyers on his staff reviewed with this committee on a clause-by-clause basis the act, giving the committee suggestions for changes, amendments, substitutions, et cetera, with reasons.

That transcript is available, to the extent we will get into in more detail. As a result of that exercise and concurrent with that exercise the Ombudsman, Mr. Morand, sent to the Attorney General, in a more formal way, a draft bill.

Mr. Goodman: And a policy submission to cabinet in support thereof.

Mr. Bell: Right. That was done in January of this year. I understand, Mr. Goodman, there has been no response yet received from the Attorney General or that ministry in any way, shape, or form in respect to that.

Mr. Goodman: Apart from Mr. Morand's information that the Attorney General has given the draft policy submission and draft bill to the appropriate member of his staff to review.

Mr. Bell: That is Mr. Polika within the Attorney General's ministry is it?

Mr. Goodman: I believe so.

Mr. Bell: When we were preparing for these sessions, Mr. Shymko, I asked Mr. Goodman, "Would you inquire of Mr. Morand whether the committee can have copies, for no other reason but to keep current with what is developing?" Mr. Goodman, I think you have some comments to make concerning that request.

Mr. Goodman: I should first make the point that the draft policy submission made specific reference to the fact the comments of the select committee were carefully considered. This is expressly set forth in the policy submission. Where the Ombudsman saw fit to recommend changes the select committee itself had recommended--very useful recommendations--then that is set forth in the submission.

Mr. Morand does not feel that at this point any useful purpose would be served by tabling with the committee the policy submission and amendments. In fact, it may be more of a hindrance than a help. This is his view. The comments of the committee were taken into account in preparing the submission. It is in the hands of the Attorney General, where it should be.

3 p.m.

Mr. Bell: I am not sure I understand why Mr. Morand would think it might hinder unless he believed the committee might involve itself in commenting upon those amendments. Is that what his concern is?

Mr. Goodman: Since the committee is a nonpartisan committee, and we welcomed the comments of the committee with respect to the amendments that we were contemplating at the time, it just does not seem appropriate from his standpoint that once the submission and the draft bill have been tabled with the Attorney General before any bill has been introduced to then rehash the matter over again.

The comments of the committee were taken, digested and incorporated. There will be a time for the members to make their views known should the Attorney General see fit to introduce the bill to amend the act.

Mr. Bell: If the Attorney General has no objection to the committee receiving a copy of this for information purposes would Mr. Morand still have any concern?

Mr. Goodman: You would have to ask him that. I am sorry, I am not in a position to answer that.

Mr. Bell: Ask whom?

Mr. Goodman: Mr. Morand. I am sorry. I am not in a position to answer that. I know that he would prefer that we not be asked to table it. He is not hiding anything, he just does not



feel that any useful purpose would be served at this point by doing it.

We have your comments, we have your recommendations. They were very useful and he took them into account and reference was made to them in the policy submission.

Mr. Bell: Mr. Goodman, would you ask Mr. Morand that for us? Would you ask him that if the Attorney General has no objection, would he still have any concern?

Mr. Goodman: Yes, I will.

Mr. Van Horne: Would it mean any more if that request came from the committee unanimously as opposed to coming from counsel of the committee?

Mr. Goodman: Perhaps some background is in order. The committee recommended that after we--and you can make reference to the previous reports of the committee--incorporated and took count of the committee's suggested changes that we then proceed to meet with legislative counsel and with the Attorney General. That is precisely what we have done.

We have done exactly what the committee has asked. We did meet with legislative counsel. Legislative counsel and the Attorney General both recommended that we prepare a draft policy submission in support of a draft bill. That was done. Mr. Morand does not feel that anything useful would be served by giving you now the draft bill and policy submission. It is in the hands of the Attorney General.

Mr. Chairman: I wonder, Mr. Goodman, what harm would be done by the committee being provided with this for information's sake and nothing else. I can appreciate the Ombudsman's concern about perhaps muddying the waters and taking exception to some of the proposals and so on. That is probably a legitimate concern at this point in the proceedings, but I personally cannot see anything wrong with this committee being made privy to what those proposals are.

Mr. Goodman: As I say, I will take the matter up with Mr. Morand and will be pleased to provide you with an answer.

Mr. Bell: Understand the reason why I made that request. The committee would like to hear what Mr. Morand's view would be if the Attorney General does not object rather than going right to the Attorney General right now and saying, "Will you give us a copy of that?"

I frankly think the Attorney General would probably give the committee a copy of that with some caveats attached. But if Mr. Morand has a continuing concern, in fairness to your office and him, we should know about it and consider whether in the event of that we should make the request.

Speaking for myself, I agree with the chairman. I cannot see the concern so long as the caveat is, as I understand it, for your

information and please do not make comment or consider it right now because we have not even heard from the Attorney General.

Mr. Shymko: Yes, I would reiterate the support of the comments of our counsel. I think your request should be made, Mr. Goodman, to the Ombudsman in the spirit that we have full confidence and we have had a good working relationship as a select committee with the Ombudsman's office in the past.

We are certainly interested in the concerns of the Ombudsman in terms of the act itself and changes. You have indicated to us that most of the recommendations that were made by the select committee have been incorporated into the proposed amendments and that some of the suggestions are referred to, but there may be additional aspects of those amendments of which we are not aware. In the spirit of that co-operation, and in the assistance that we would like to provide as a committee to the Ombudsman, it makes a great deal of sense to me not to hesitate in providing that information.

There is an aspect of confidentiality that I am sure we are mature enough to maintain and not to use that information in any partisan manner before any decision is made by the Attorney General's office whether to proceed with these recommendations or not. I am sure that the Attorney General's office should be notified of that request as our counsel indicated.

Should the Attorney General have reservations, I just wonder how we would proceed then.

Mr. Goodman: I want to make it clear that it has never been suggested in any previous hearings that the select committee then wanted us, following the meetings with the legislative counsel and the Attorney General, to table with the committee any proposed amendments or draft policy submission. If you take a look at the previous committee hearings they suggested that we meet with legislative counsel and meet with the Attorney General and proceed. That is exactly what we did.

Mr. Bell: You and I can debate that, Mr. Goodman, but if we both go back to the proceedings of August 1978, you will see Mr. Maloney indicated with, I believe Kathy Cooper, at the time that when such time as the document was formalized the committee would be provided with same. I do not think we should take the committee's time up with that right now.

Mr. Goodman: What Mr. Maloney and Miss Cooper did is that they went through the proposed amendments clause by clause with the committee at that time, and the committee offered its comments.

But this is no problem. I will certainly ask the Ombudsman whether or not, if the Attorney General does not object, he has any problem of tabling it with the committee. I am simply telling you what he has told me, that he would prefer not to table them.

Mr. Chairman: I think, Mr. Goodman, you are aware of the concerns of the committee and you are going to relay those back to the Ombudsman as early as next week.



Mr. Goodman: Absolutely. He reads Hansard just like everyone else does. He can read all the members comments himself.

Mr. Bell: Mr. Chairman, while we are on the point, it is my recommendation to the committee that we not further consider the matter of rules for the guidance of the Ombudsman. Whether or not there is anything that comes to your attention in the next week or so may cause you to conclude that one is appropriate.

You have to get the horse before the cart and in my opinion right now it is the cart before the horse. The horse is the amendment of that act. Those amendments should be taken to completion and let us see what happens from that and then decide whether any rules are appropriate to supplement or explain. To get into rules now will further muddy the water.

Mr. Goodman: That is right. Mr. Bell will recall that there were a number of matters that the committee passed rules on and our answer was that we feel it is more appropriate to cover this matter in the act. For instance, confidentiality on the part of employees is not covered in the act although it is for the Ombudsman. The committee, as I recall, passed a rule on the matter. We felt that it should have more appropriately been done by way of amendment so both would be covered in the act.

The only matter that you might want to consider, in view of the amendments, is the South Cayuga one that is already on.

Mr. Bell: If I recall the discussion in August 1978, the amendments that you discussed with the committee then are substantially the amendments that you tabled with the Attorney General. I think you are going to have relief under the amended section.

Mr. Goodman: No, that was not a problem at that time. It was not a proposed amendment.

Mr. Bell: No, but Mr. Maloney wanted an amendment to the act that gave him some discretion to make information or reports public if he thought it to be in the best interests of those concerned. I am paraphrasing that.

Mr. Goodman: Yes, that is so.

Mr. Bell: If that is in your package of amendments it seems to me that that takes care of the problem.

Mr. Goodman: It is in the package of amendments but there is another amendment. That would not satisfy us, as I understand it. May I refer to the person who has written the committee by name, or who has approached the committee by name?

3:10 p.m.

Mr. Bell: I prefer you do not. It has not been made public.

Mr. Goodman: It is my understanding that his concern was that although he was given the opportunity to make representations with respect to an adverse report, because he is a private citizen, he is not entitled to a copy of the report under the act. He is not a member of the governmental organization and he is not a complainant.

There is a further amendment proposed which would provide that where a person has been given an opportunity to make representation with respect to an adverse report, that the Ombudsman shall have the right to give that person that much of the report that pertains to him, or her, as the case may be.

His concern was that he only found out about it when it was made public. He wanted to find out about it before then. So that the amendment that you are speaking of would not help him. The one that I am mentioning would, but he would still only find out about it when it was public.

Mr. Bell: In any event, if you get the amendment as you have suggested them to the Attorney General, there is no need to concern ourselves with a rule to cover that, or this committee to recommend another amendment.

Mr. Goodman: That is right. That is one reason why it might be of assistance to the committee to have copies of those suggested amendments so that we do not get into areas that have already been covered.

Mr. Bell: You segue right in beautifully to the report on South Cayuga which is the next item on the agenda. That is under your tab A, subtab b, which is probably the thickest part of the whole brief. The reason it is so thick is that it contains the South Cayuga report, so-called, and a covering letter from Mr. Goodman to myself and the previous chairman of this committee, Mr. Lawlor, explaining certain matters which are fundamental to understanding the report, and then, in some way, the circumstances of the gentleman who has written to the committee.

You will see that his name is referenced at the bottom of page two, the last paragraph. I believe his association with a private company in this province is also referred to. Let me just give you further background.

When the Ombudsman investigated and reported South Cayuga, a report on the investigation dealt with a number of complainants. He broke his investigation, and his report, into two parts: general issues, and specific issues. To the extent that he reported to individual claimants, he extracted, if you will, those parts of the central report as they related to that individual complainant, and he sent that off to them. So, obviously, from a global perspective there were as many individual reports issued as there were individual complainants, and you had to assemble all of the individual reports before you had the one report.

What happened as the reports individually were issued to the complainants, they were in some way published in the local media. Some of the reports referenced this gentleman by name and I guess



included certain comments as found in the report, and as attributed to him referable to conduct or such.

The gentleman upon learning of these publications tried through contact of the Ombudsman's office to obtain copies of the reports where he was named. I believe he tried through some members of this committee, and he tried through the complainants individually, on occasion. To make a long story short, he was unable to obtain copies of any of the reports, or of the central reports to determine whether and to what extent comments had been made about him, and following upon that to decide what, if any, comments he he saw fit to make himself. Have I stated it accurately so far?

Mr. Goodman: Yes, except--

Mr. Bell: At least as far as your office's knowledge is concerned.

Mr. Goodman: I don't recall your saying that he was a person who the Ombudsman determined might have been adversely affected by his ultimate report. My understanding is--and Ms. Bohnen can correct me if I am wrong--that he was given the opportunity to make representations.

Mr. Bell: You're right, and that's a very important part.

Mr. Goodman: That's an important point.

Mr. Bell: As I understand, the Ombudsman's office did interview this gentleman as part of its investigation, maybe on more than one occasion; but certainly his conduct, the conduct of the company with which he is associated, was the subject matter of a part of the investigation.

You recall that the Ombudsman has a procedure under section 19(3) of his report which says that--and I'm paraphrasing--where he may make a finding and a recommendation adverse to any person he is to provide that person with a report setting out those possible findings and recommendations and permit the person an opportunity to respond, make submissions or whatever. As per the Ombudsman's practice he issued such a report to this gentleman, and I believe the gentleman in response thereto made submissions to your office. He chose not to respond at all?

Ms. Bohnen: The other agent involved in the company made one response.

Mr. Bell: On behalf of all of them?

Ms. Bohnen: On behalf of all of them.

Mr. Bell: All right. And they were assisted by counsel as well, and counsel did write one lengthy letter at some time. I should say it was a senior counsel of the city of Toronto as well.

Ms. Bohnen: Yes. Very senior.

One other clarification, Mr. Bell, is that one of the ministries to which the report in its entirety was sent let it be known that it would release at least parts of the report to parties such as the real estate company upon request, and certainly we directed the company and anybody else who contacted us to that ministry.

Mr. Bell: What happened?

Ms. Bohnen: Frankly, I'm surprised to hear that he was unable to get anything, because I was certainly under the impression that the company got at least the general parts and the conclusions.

Mr. Bell: All right. In any event I am paraphrasing the history of this, so that--

Mr. Van Horne: May I ask a question? I'm not a lawyer, so I have trouble understanding the way you lawyers talk back and forth.

Mr. Goodman: Even we have trouble, Mr. Van Horne.

Mr. Van Horne: You're referring to gentlemen and companies without naming them; and yet we are talking about Cayuga, and we all know that the company concerned was the LePage Real Estate Company, which was named in every newspaper in the province of Ontario.

Why is there a reluctance to get into specifics here if in fact it's public information? Is there still something that causes problems for either side here to get into this?

Mr. Bell: Well, Mr. Van Horne, speaking as counsel for the committee, to the extent that there continues to be some obligation of confidentiality surrounding this report imposed on the Ombudsman which, as this committee has stated in the past, it tries to support by not making unnecessary disclosures in its proceedings, then I for one would not like the committee to be party to the disclosure of anybody's name or the disclosure of any institutions, companies or parties to an investigation unless it is absolutely clear that the persons involved have no objection.

Mr. Van Horne: Let me go back and ask: Am I wrong that this thing was publicly known?

Mr. Bell: I guess I'm the wrong fellow to ask, because frankly I did not follow the publication of Mr. Morand's report in the papers. I know that the individual in question and the company in question were mentioned in the reports and approached Mr. Lawlor and the clerk historically.

The gentleman has asked for permission to appear before the committee. The committee decided last September that it would extend that invitation to him, but only on the question that we are now discussing: that is, he was unable to obtain a copy of that report, because he is a private citizen and the reports were issued only to governmental organizations and complainants. The



committee made it very clear when it made its decision in camera and it placed conditions upon that decision, which can now be made public, that it would not entertain a discussion with the individual as to a review of the South Cayuga report as it applied to him.

3:20 p.m.

That's a very long-winded way of saying it. You may very well be correct, sir, that the person we are talking about now is the same person and the company is the same company discussed in the media. I can't confirm it one way or another.

And I'm not avoiding the question; I believe it's probably all academic. If, as and when we approach this gentlemen and ask, "Do you mind if your name and company are discussed?" the answer will probably be no. He can't ask to come before the committee in public and then, on the other hand, have his identity remain confidential.

I'm trying to be consistent with a ruling this committee made on Monday of this week that, until such time as a decision is made to hear from people about certain subjects, matters must remain confidential. To avoid that why don't I invite you right now to decide whether you want to reaffirm the decision the committee took last September?

Mr. Van Horne: I have no problem with the decision that was made at the beginning. It just struck me as a peculiar exercise in this instance not to name or refer to either a company or a person by name if in fact they had already been made public, and I had understood that in this instance it had been made public.

Ms. Bohnen: Mr. Bell, certainly the name of the company is no secret--

Mr. Van Horne: That's the only name, by the way, which I did bring out.

Ms. Bohnen: I think we may not be so cautious as not to refer to LePage when we discuss it here today. As far as the individual agent is concerned I notice that the documentation in the binder, which was prepared for the committee, names him and indeed--

Mr. Bell: This is still confidential, though.

Mr. Goodman: That's right. And aside from that I prepared it on the basis that obviously it would be kept confidential--that is, for the committee's eyes only. Obviously I named--

Mr. Bell: Further, Mr. Van Horne, the committee decided to extend an invitation to this gentleman in camera. It did so for the reason that unless and until it made its decision and extended the invitation and the person came forward it was not going to be the vehicle to make the disclosure.

There is a precedent for this, by the way. Next Wednesday afternoon you will be dealing with a Ministry of Health matter involving Dr. Claude MacDonald, a complainant to the Ombudsman's office respecting the ability or lack thereof of doctors in this province to obtain privileges in the hospitals of their choice. I can mention Dr. Claude MacDonald because he was the gentleman who came forward to the committee on a given day and disclosed his name and identified himself with a certain investigation and report.

Mr. Goodman: On the other hand, the concern that counsel has expressed is extremely well taken. There are many complainants to our office who make it a point of telling us when they come to us that they don't want their names mentioned. The reason the complainants in South Cayuga received individual reports rather than one global report is that they were all concerned that their neighbours not know their personal and financial circumstances, which are set forth in the report to some degree.

Mr. Bell will recall that when Mr. Rose decided to make the Pickering report public a very irate lady got in touch with our office thinking we had made it public. She complained that Mr. Rose had publicly disclosed what she had received for her land, and she was very upset about that. She did not want her name mentioned.

Mr. Bell: In any event the name of the company has been discussed, and if the Ombudsman's office is not uncomfortable with that name being discussed it makes me less uncomfortable. I would prefer that the name of the individual be deferred, Mr. Van Horne, until--

Mr. Van Horne: As you well know, I could have named that name but I chose not to, given what we had discussed on Monday. But it still struck me as peculiar that the--

Mr. Bell: I think it's a tempest in a teapot. I think we are perhaps being overly cautious, but I prefer to err on that side today.

Now, members of the committee, you have got that issue before you. The gentleman perceives that he has in some way been--I will use the word prejudiced--because of his inability to obtain a copy of an Ombudsman report from the Ombudsman's office and perhaps from the governmental organization in question, subject to a confirmation of that latter point. He wishes to address the committee as to that concern.

Your predecessors have decided to issue the invitation. I invite you to consider now whether you wish to affirm that invitation and that decision and issue an invitation through either the chairman or the clerk's office.

Mr. Chairman: Are there any comments on that? Do we have a motion?

Mr. Van Horne moves that the individual be invited to appear before the committee at a date mutually acceptable to him and to the committee. I think there were some other riders to that also.



Mr. Bell: As I say, if you have reaffirmed that decision--and the decision had limits on it--that the committee will hear from him on this question of his inability to obtain a copy of the report, the committee will not discuss with him what he perceives to be the merits or lack thereof of the report. This committee has said on previous occasions that it is not within its terms of reference to second guess, if you will, the judgement of the Ombudsman on a matter that is really not formally before it.

Mr. Chairman: As the mover, are you in agreement with what counsel is suggesting?

Mr. Van Horne: It's going to be (inaudible) talk to that point, and I guess the point really is that my motion should be broadened out to include what has been suggested by counsel. I would ask, therefore, that that be included in the motion. And if I may at the same time speak to it I would submit that it may be difficult for us to keep on track, given that he may well want us to reconsider. Therefore, I guess I'm just suggesting a caution to the chair and to all of us that we don't let him get off target on the day he comes before us. However, that's almost an aside.

Mr. Chairman: Is there any comment on that? Are you all in agreement?

Motion agreed to.

Mr. Chairman: I think we will direct the invitation through the clerk's office if no one has any objection.

Mr. Bell: That's right. Mr. Chairman, members of the committee, I don't see that it is feasible to arrange this attendance between now and next Thursday. It's not that you don't have time to do it; I just don't believe the gentlemen will be able or prepared to do it with the notice given. You may have to arrange for a morning or an afternoon at some time between now and the resumption of the House to deal with this matter and anything else that is not completed.

Mr. Boudria: Mr. Chairman, why is it not possible for us to attempt to get him to come before the end? If you can't, fine; but it is conceivable that somebody could be available for a couple of hours within the next week, especially with the business that person is in; one pretty well chooses one's own time. It is one week's notice. It may be possible and we wouldn't have to extend the meetings any further.

Mr. Chairman: We can make every attempt to get him in next week.

Mr. Bell: Mr. Chairman, I would like to move on to the last item remaining for the afternoon, and that is found at the very next tab, item A (c). It's broken down into five categories in your brief, but we've had an add-on since that time. Mr. Chairman, you received a communication from a member, from another person who communicated to the committee through that member to you; so, we have six items to attend. One of the purposes--sorry, Mr. Shymko.

3:30 p.m.

Mr. Shymko: If you would pardon me, Mr. Chairman, I just wondered, since we had three items A, B, and C, referring to the May 29, 1980 resolution, sub-item (a), are we dismissing this for consideration?

Mr. Bell: No.

Mr. Shymko: Or is there any time when we will be discussing that particular aspect? I do not see it listed anywhere for September 15, 16 or 17.

Mr. Chairman: What item are you referring to, Mr. Shymko?

Mr. Shymko: I am referring to--

Mr. Bell: There is a resolution to the Legislature on that.

Mr. Shymko: The resolution, yes. This is item A, sub-item (a)--the very first one.

Mr. Bell: Mr. Shymko, if it is not on here, it should be on here and we can include that on Wednesday afternoon, if that is acceptable.

Mr. Shymko: On the sixteenth?

Mr. Bell: Under other business. We have now deleted the other business we had on there and we have added the C and the B items that were originally scheduled for today. We can add to that part (a) of the first part being the May 29, 1980, resolution. I think that is a good time to put it on, as well, because any members who have not had an opportunity of perusing the debates again would do so. Thank you for bringing that to my attention.

One of the purposes of giving you the documentation is that this record does not have to be taken up with a lot of detail. You all have the record that I have in front of me. I remind the committee of its ruling on Tuesday morning that until it decides that any of the matters raised by these letters are such that they would assist in the exercise and the fulfilment of its terms of reference, and thereby will call that person before you in public, these items remain confidential and while we are going through the decision process, whether or not to call the people, they remain confidential and we can speak in general terms.

If you would permit me, what I would like to do with each of the six is to give you what I perceive to be the substance of the person's concern. Mr. Goodman and his office have had three days to see it. I do not know whether that is enough time for them to make any contribution today.

The first item, in number one, deals with a gentleman who frankly is not satisfied with the conclusions the Ombudsman came to in his investigation. He would like the committee to hear his reasons as to why he disagrees with the Ombudsman's conclusion and



would ask the committee to substitute his view for the Ombudsman's and, thereby, through your process, recommend to the Legislature that the governmental organization named in the material would give effect to the relief this man is seeking.

The committee has, to date, remained steadfast that where matters are brought to its attention by way of comment or criticism of complainants who disagree with the conclusions arrived at by the Ombudsman and any findings he might make in respect thereto, the committee will decline to become involved; only in the most exceptional circumstances would the committee become involved. Those circumstances might be where it was apparent on the face of the material that there had been a total abrogation of the Ombudsman's function in the conduct of this investigation.

Let me give you a very extreme example. A person complained in writing to the Ombudsman and the Ombudsman responded by letter back saying, "I have considered your complaint and I found it to be unsupported and I thereby am closing my file." That would be a total lack of process as required by the Ombudsman Act.

If it was apparent on the face of any material that that had happened, it would seem to me the committee may wish to hear something in more detail, both from the individual who has written and from the Ombudsman's office. But unless it is an extraordinary circumstance, you do tread into the realm of Ombudsman jurisdiction and you run the great risk that you may be, in fact, and may be seen to be usurping his function.

Mr. Goodman: Quite apart from that, I can tell you that, practically speaking, every unsuccessful complainant to our office would write to you and ask for the right to appear. If they were under the impression that you were the court of appeal for the Ombudsman, or the Ombudsman for the Ombudsman, then there is a further level of appeal--and I assure you it does not take long for people to find that out--and you would be inundated with correspondence.

On the other hand, I want to make it clear that some of the complaints that have been made have pointed out deficiencies in the act or matters wherein our procedure could be improved, and it has helped in the recommendation of rules. We welcome that. But where it comes to the point of being asked to second-guess the Ombudsman on a decision as to finding a complaint supported or unsupported, then, as your counsel indicates, I believe you are treading on very difficult terrain and you are inviting destruction.

Mr. Bell: If I can continue that, you have the detail of the individual's concern. You have seen the letters that have passed between him, the former chairman, and myself. You even have a salutation from the former chairman in a letter to me that our glorious camaraderie is drawing to a close. I thought I would put that in for comic relief. But in any event, you can see that Mr. Morand, in one of the letters to the individual, has given a very practical suggestion, that the remedy lies elsewhere.

For all of these reasons, it is my recommendation that the committee not consider this matter any further, that it will not assist in carrying out the terms of reference and that a communication be sent to the gentleman advising him that the committee has considered the detail of the information he forwarded to it and has decided that it would not hear from him.

Mr. Shymko: Yes. Following the absurdity, we could go on and become the Ombudsman to the Ombudsman's office. If you look at the figures, all decisions that were in favour of the governmental organization, 1,485, every individual or group that was not satisfied, normally would have the right, using a precedent that we may set, to come and petition before us to review the Ombudsman's decision.

On the other scale, the same thing may happen on decisions that were in favour of a complainant or of an individual. Do we expect a governmental organization to come before us pleading that we review the Ombudsman's decision? I think there should be a motion here to simply not get involved in this, that the decision which was reached by the Ombudsman is proper. I believe they do inform the individual or the organization as to the reason such a decision is reached.

Mr. Goodman: Absolutely. The report the Ombudsman issued this gentleman is attached--it is in the materials--and a further letter explaining why the Ombudsman came to the conclusion he did, dated August 21. In the event, of course, that you choose to doubt it, perhaps we will be reviewing your statistics rather than vice-versa.

Mr. Chairman: I have been advised that we do not require motions in all of this.

Mr. Shymko: We do not require motions? In other words--

Mr. Chairman: As long we have agreement. If we have a disagreement then we are going to require a motion.

3:40 p.m.

Mr. Shymko: Fine.

Mr. Chairman: Counsel also suggested that we not hear the individual for six months.

Mr. Boudria: Just a point of clarification. I think Mr. Shymko was suggesting that we not consider any of these types of applications to this committee to be heard, but I think we should still continue what we are doing now--in other words, judging each one of them on the merits rather than a blanket thing that we will not hear anybody in fear of now becoming the Ombudsman to the Ombudsman.

I think that is maybe carrying it a little bit too far. We should always have that discretion, that is what this committee is for.



Mr. Chairman: Is that your intent?

Mr. Shymko: In other words, the individual has the freedom of choice of contacting us or not. When he does contact us obviously there is a responsibility to look at the letter, to read it and to respond.

Mr. Boudria: We just say no, if we deem it appropriate.

Mr. Bell: So far it is manageable. You can see the dates of some of these letters. We are talking about nine months. That is a manageable load. To the extent it becomes unmanageable, the committee may have to take another look at that along the lines of what you suggested, Mr. Shymko.

Mr. Van Horne: Just looking at the dates, I have to wonder if he has communicated with counsel or with someone to further request, because it looks like 1980--April, August and December--and then a couple of letters in early 1981. There has been nothing since February 1981.

Mr. Bell: No, there has been no communication received by my office. I think Mr. White can confirm no further communication has been received by his office. I can't speak for Mr. Lawlor's office but Mr. Lawlor's practice was pretty consistent, when he did receive something his secretary made sure I got a copy of it pretty quickly. So my guess is that he is still waiting upon an answer to his letter of January 5, 1981.

Mr. Van Horne: Thanks.

Mr. Bell: Item number two, as you can see from the material and in particular the third page, which is a letter from the gentleman to Pat Lawlor, you will see that the Ombudsman has exercised his discretion in this case to refuse to further investigate the complaint. It is that decision to refuse to investigate that the gentleman disagrees with.

You can see in the third paragraph of that letter he categorizes the decision from his point of view. He gives reasons why he disagrees. A personal interview was not granted and there is some discussion about his wish to discuss matters as contained in supplemental material and certain decisions which he has attributed to some members of the Ombudsman's office.

You will also see, however, going down the bottom of that page and going over to the next page and indeed as contained in the document accompanying this letter, there is an extensive discussion as to the merits of the complaint. Again, this committee has said repeatedly it is not a court of appeal, it will not re-do an investigation conducted by the Ombudsman and that question of the Ombudsman's exercise of his judgement et cetera is a matter between the complainant and the Ombudsman's office, unless there is something on the face of that process that the committee considers it necessary to get into in the exercise of its functions, and more particularly general rules.

This committee has never had before it previously a

communication from the member of the public who disagreed with the Ombudsman's decision to refuse to further investigate. I don't draw a distinction in that kind of discretion with the judgement that he exercises when he forms his opinions and makes his recommendations. It is a judgement which he is given under the act.

The act is very clear that the courts cannot interfere with the exercise of that discretion. I think it is a moot point whether the Legislature can. I do not believe this is the case where we should go to the wall to decide that moot point.

I say quite simply there isn't anything in the detail of the material you have before you which would warrant a decision to hear from this individual personally to assist you in performing your terms of reference for your next report to the Legislature.

Mr. Shymko: If I could comment, I think one of the facets of the Ombudsman's office which was mentioned by the Ombudsman himself is the psychological valve for a number of individuals who, in communicating their concern by phone or by letter and receiving a written reply that we are investigating and then another reply that we have decided not to further investigate the case, to some individuals it smacks of another alien bureaucracy--a bureaucratic answer and a bureaucratic type of decision.

He mentions in his letter, and this is the third paragraph, "the seemingly arbitrary decision was made by the Ombudsman without granting a personal interview." This is where the psychological aspect comes in. Had he been interviewed personally, perhaps it would have given him the impression, "At least I presented my case physically before the investigative body," or whoever the investigator may have been there, rather than to have the investigator reach that conclusion on his own without listening to the person first.

I don't know, maybe I am wrong, but I think had there been a personal interview with the man to listen rather than to simply read his case--

Mr. Goodman: The trouble is, Mr. Shymko, first of all you are assuming that what someone says in a letter to you is, in fact, the case. In the past what we have done is this: Mr. Bell has given me copies of the correspondence from members of the public. We have elicited the consent of the complainant, who is complaining to you, to send you the letters that we sent to him, because without that we have no authority to do so. Then the committee has made a determination as to whether there was anything further that needs to be done.

Since I only received these letters three days ago and since I was waiting to see what the committee would do, we have not had an opportunity to do that. But just a caveat, don't assume that everything that is said to you is, in fact, the case. We have found in the past that complainants perhaps have overstated their cases to you, as they are wont to do if they want to get you to assist them.



Mr. Shymko: Was he interviewed?

Mr. Goodman: I can't give you the answer to that because we haven't had an opportunity to--I didn't know what the committee wanted. If you wanted to proceed with it we will have to get the consent of the complainant and we will have to make copies of the information for you and get it to you and you can make your own judgement on it.

Mr. Boudria: I just want to clarify this. In his letter it is kind of ambiguous even what he is saying. He says that the Ombudsman didn't grant him a personal interview.

Does he mean that nobody in the Ombudsman's office wanted to see him or does he mean that Mr. Morand himself doesn't want to see him? Of course, that is a totally different thing. If he was granted an interview by the office of the Ombudsman, as far as I am concerned, that constitutes a personal meeting with the Ombudsman. But can you clarify that point?

Ms. Bohnen: I took his statement to mean that he was objecting to not being seen by Mr. Morand. I haven't gone to the file but it would be extremely unlikely that he would not have been seen by some person--be it a researcher or an investigator or a lawyer--before it could be closed, especially since it appears that he lives in Toronto.

Mr. Shymko: I think it is worth while checking whether or not he, in fact, was interviewed by one of your investigators.

Mr. Goodman: We can certainly find that out for you. If the committee wants any further information, as I say, because of the duty of confidentiality we can't send you the letters that we sent him unless he gives us his permission to do so.

3:50 p.m.

Mr. Bell: Mr. Shymko, would you like to defer a decision on this until we receive information as to whether a personal interview with this individual was granted or obtained?

Mr. Shymko: Yes, but I would like to have another piece of information.

Have there been any cases before where you had informed a complainant that you would not pursue further investigation of his case and then you decided to have a different opinion, you changed your mind and notified him that, yes, you would listen to his complaint again, or continue investigations?

Mr. Goodman: Oh yes, if for instance there was an appeal procedure--you mentioned grievance procedure--the Ombudsman would exercise discretion not to further investigate until such time as that procedure was resorted to, and then he would investigate once that had been done.

But this appears to be a case--and as I say I have not really examined the letter--where the man provided an affidavit

setting forth the reasons as to why he felt the Ombudsman should investigate, and the Ombudsman took it into account and decided that he was not going to change his view.

It is often the case, for instance, on a nonsupport complaint, that once the complainant writes us back and says, "I still think I haven't been fairly treated, and this is why, and would you kindly reconsider your decision?" Because, of course, we now know, if we did not before, that the Ombudsman has the authority to further investigate; then he will decide whether or not he should reopen.

Mr. Shymko: This has been done in the past? There have been investigations reopened?

Mr. Zacks: Yes. There is one case that I am personally familiar with. We reinvestigated four times, and each time the man had a grievance procedure available to him, he took it and came and asked us to look at it again; and it went back to grievance and came back again. Each time we looked at the matter fresh, at least four times. Hopefully he will not come back the fifth time, because it is continuously the same matter. But we do do that, yes.

Mr. Shymko: In other words, we would not be setting some kind of unusual precedent?

Mr. Zacks: No.

Mr. Cooke: What is the normal procedure used? Is the normal procedure that our counsel gives you these letters, you get permission before the committee meets to divulge this information from the individuals, or do we have to make a decision on each letter each time we meet?

Mr. Goodman: For instance, if counsel advises you, as he did with respect to the first one, that he does not feel that the kind of request that is being made falls within your terms of reference, then I would not obtain the consent to get the further information that we sent to the complainant, because no useful purpose would be served.

That is why I have waited till today to see what you intend to do with each of the items.

Mr. Bell: The usual procedure is as that motion that we passed on Tuesday contemplates. That motion says that notwithstanding the issue of confidentiality and where deemed appropriate--and the appropriate speaks to a decision by the person who receives it, always the chairman--those letters will be provided to the office of the Ombudsman; and it is when the Ombudsman receives those letters that, depending on the circumstances of the "complaint" they set that procedure in motion.

It is not always the case where it is necessary to go and get permission for release. Some times it has been a question of another interview, or an interview with the person and somebody at the Ombudsman's office which has resolved the problem. It is the old, "Oh, I didn't understand that, and thank you for the explanation."



Mr. Cooke: My only concern is that, for example, on this particular letter, if we decided that we wanted to get more information we would have to get a release of information from the individual, and then we are really not talking about dealing with this until the next time this committee meets.

Mr. Chairman: The specific items that Mr. Shymko was talking about should not involve requesting authority from the individual involved. That was my understanding.

Mr. Shymko: We are presuming that what he is saying is true; but there seems to be a contradiction, because we have just made a general statement not to get involved with these cases and to simply dismiss them, and at the same time we are discussing them and trying to make a recommendation which dictates to the Ombudsman, in fact. Our committee will be dictating to the Ombudsman's office.

Interjections.

Mr. Shymko: I just wonder if there is any contradiction in our terms.

Mr. Cooke: There may be times when we want the information, not to act as a court of appeal, which I do not think any of us think is a good route to go, but to look at rules for the Ombudsman. We would still have to get the release of information before we could do that.

My only concern is the time frame we are using when we are only sitting for two weeks. To get a release of information and all the rest of it, we are talking next spring before we can deal with something.

Mr. Shymko: In other words, the information we would like to have, we would like to see this some time on Tuesday or Wednesday at the latest, as a piece of information and not simply to guide us in the procedural aspect of reaching a decision on the interviews, rather than to question the decision itself.

Mr. Chairman: The clerk advises me also that, in his experience, there would not be a difficult problem to overcome. We could get the approval of the House to sit some afternoon for an hour or two to deal with that.

Mr. Cooke: I just wonder why there could not be an easier procedure where a release of information on something like this is obtained with a letter to the individual indicating that the committee still has to make some kind of decision, but an automatic release of information so that it can be done quickly.

Mr. Bell: That will be done as hereafter the process of your motion is followed. There is another problem and that is we were between parliaments. There was no committee by definition and therefore there was no counsel or chairman. As you can see, there is a falling between two stools as to this process.

As your motion is implemented, that will be done as it is

considered necessary in the circumstances. I think what is implicit though in the motion is the chairman is to be afforded some degree of screening where I think a decision can be made very quickly that, "No, we will not get into this," or, "Wait a minute."

To give you an example, there is a letter you will come upon down this list from an individual who has made allegations that the Ombudsman's office has either lost or is withholding documentation from that person. It is my view that, where those types of allegations are made, the Ombudsman should be permitted an opportunity of disclosing files to lay that to rest.

The Ombudsman does not have the ability nor would he choose to go around suing people for defamation. The only recourse he might have is to have a discussion of that type of situation through this committee. If you all perceive a difficulty in coping with these decisions, you are not alone for all the reasons we have given you.

May I suggest something with respect to item two? Defer your decision until you receive the additional information as to the question of an interview. You are going to see later on that there is contained in another one of these letters a question of information being received or passed on by phone call as opposed to an interview or a letter.

You may be in a situation where you might decide to ask the Ombudsman to take under advisement whether, where you have situations falling within the category of refused, further to investigate the policy of having personal meetings to explain that. It may be appropriate wherever practical.

Mr. Goodman: I assure you that is done wherever we can. I do not have to tell you about some of the complainants who approach our office because you get a lot of them too. In some cases, it is just not appropriate; in fact, it would be extremely dangerous to have a personal interview with the Ombudsman. Some of these people in this book I am familiar with and they fall within that category.

Mr. Bell: Can we defer this and get through the third one? I think we can do it in about three minutes because it seems to me that--

Mr. Chairman: I would like to interject right now. I have to depart so Mr. Van Horne is going to assume the chair for the remainder of the meeting.

4 p.m.

Mr. Bell: Members of the committee, in the third one you will see that in November of last year, which is the last item of correspondence for you, I wrote to the individual after discussions with the chairman and told him what I would do in accordance with the committee's established practice. I also took the time to tell him what I would recommend at the time.

I did it for an obvious reason. I have received no response



to that letter. To the best of my knowledge neither the clerk nor Mr. Lawlor has ever received a response. I do not draw any conclusions from that, but it is for your information.

You should know that there is a letter from the Ombudsman's staff dated September 29. That is a letter representing a relatively new procedure called administrative fairness that the Ombudsman now undertakes whereby, when his investigation reaches a stage where he has the "position of the governmental organization," he summarizes that position and gives it to the complainant for comment.

The following letter dated October 4, 1980, is that complainant's comment. You will see that, within a week of that date, the complainant wrote to the chairman. Very clearly, when the date the communication was sent, the Ombudsman had not yet completed his investigation.

If you are not going to second guess the results of an investigation, you ought not to be getting into a matter where that investigation has yet to be completed. I would expect however that, since that time, almost a year, the investigation has been completed.

Mr. Goodman: That is so.

Mr. Bell: Have you so reported to the complainant?

Mr. Goodman: Yes, we have.

Mr. Bell: Did the complainant respond in any way?

Ms. Bohnen: I think not, but I would have to check.

Mr. Bell: Would you get that information? What I would suggest, members of the committee, you can defer this again very quickly but it would be appropriate for you to indicate to the individual that in no circumstances will you involve yourself with an investigation conducted by the Ombudsman which has yet to be completed.

I think you should afford him at least the opportunity of completing the investigation depending on what information we get about the report and any further communication from the complainant to the Ombudsman. You can then complete your communication to him. Again, it is not a matter which in my opinion would assist you in carrying out your term of reference.

Mr. Cooke: I am not sure we even need to defer it. If this individual wrote to the committee before the completion of the investigation and has not communicated with us since, and the investigation is completed, then we can assume he must be satisfied with the results.

Mr. Goodman: I sincerely doubt, to be fair, that he is satisfied with the result because the Ombudsman found his complaint not to be supported.

Mr. Cooke: But he has not addressed the matter here with us.

Mr. Goodman: He has not addressed you on it.

Mr. Shymko: We would like to know whether he has addressed the Ombudsman's office subsequent to the Ombudsman's decision.

Mr. Bell: I think also you are going to have to confirm that the report in writing has been sent to him. That is the critical information.

Mr. Goodman: We know that now. The answer is, yes, he has received a copy of the report.

Ms. Bohnen: The answer is, yes, the report was sent.

Mr. Goodman: Whether he received it or not we do not know, but we will check to see whether we received any further correspondence.

The Acting Chairman (Mr. Van Horne): You will report back to us next week.

Mr. Goodman: Yes, Mr. Chairman.

Mr. Bell: But in any event along the lines of what Mr. Cooke said that, if you advise us that no further communication has been received from this gentleman, the consensus appears to be to report to him that, one, you do not become involved in investigations not completed and, two, it is not something within your term of reference.

The Acting Chairman: Does this committee wish to carry on to finish this section, counsel?

Mr. Bell: If the members would like to break at 4:15 p.m., can we get as much done within the next few minutes as is possible?

Number four deals with an individual who had communicated on a number of occasions to the committee during the last session of parliament. You should know that the matters he drew to the attention of the committee were considered by the committee in detail. A consent for release of information, Mr. Cooke, was obtained in this case. The files were reviewed by me on the committee's behalf with the Ombudsman's office.

The committee dealt with the matter in camera. The committee decided it would not hear from this individual in question, that the matters raised by him were properly between him and the Ombudsman and would not assist the committee in carrying out its term of reference.

I take it that these additional items of communication are not along the lines of the concerns that he expressed before but,



as his letter of January 14, 1981, indicates, are more a request for information.

You will see in the second paragraph--this is the first document as you turn the tab--it thanks Mr. Lawlor for some material, indicating, "The letter clearly indicates how the Ombudsman operates and treats the citizens who are looking for his justified and legitimate help." It makes a final request for certain information contained in a letter between the chairman and Ombudsman.

It is a fact, Mr. Goodman, is it not, that your office is presently investigating matters of complaint referred by this person?

Mr. Goodman: It believe there is one. It is the same complaint.

Mr. Bell: But it is an active file.

Mr. Goodman: Yes. You will recall also that following our meeting with you concerning this matter, we sent a detailed letter to the complainant, point by point, as clearly as possible answering his concerns.

Mr. Bell: If I can just summarize this, I do not take this communication to be a further request to appear before the committee.

Would you do us a favour and report back with the other information on the other complaint? Would you see whether Mr. Morand has any objection to a copy of that December 19, 1980, letter being provided to the individual?

Mr. Goodman: I believe that is a copy of the committee's letter to the Ombudsman.

Mr. Shymko: That's right.

Mr. Bell: That is what I am saying. Would you check with Mr. Morand whether there is any objection to that letter being provided? By the way, that letter is not with this material.

Mr. Shymko: Is it standard procedure for the chairman of the select committee to send copies of his correspondence to the Ombudsman when it affects a particular case or individual?

Mr. Bell: It is not a standard procedure for the chairman of this committee to send a member of the public a communication passing between the chairman and the Ombudsman. I am not sure a request has ever been made before this one.

Mr. Goodman: You will recall this is the same individual who also requested of our office copies of all correspondence which we exchanged with ministries respecting his complaint.

Mr. Shymko: I am not surprised he raises this, because the chairman did send him a copy of the Ombudsman's letter to the

chairman; so logically, if there is a communication one way, why shouldn't he get a copy of a communication the other way?

Mr. Bell: That is why I asked of the Ombudsman whether he has any objection to his letter being sent. Frankly, I would not mind completing the process and then considering the matter at an end. As of next Tuesday, Mr. Goodman, will you advise us of that?

Mr. Goodman: Do you have a copy of the letter yourself? If I could make a copy of it, it would save me a great deal of time in locating it.

Mr. Bell: I will speak to you about that after, Mr. Goodman.

The Acting Chairman: That may mean yes.

Mr. Bell: Mr. Chairman, item five.

The Acting Chairman: Before we go on, is there nothing else on number four? Number five?

Mr. Bell: Item five contains extensive correspondence passing between the group that the individual represents, the Ombudsman's office, Mr. Lawlor and, lastly, myself.

I can categorize for you what I believe to be the concerns. The individual is apparently unhappy about what he categorizes as certain attitudes displayed by members of the Ombudsman's office and, secondly, the length of time that it has taken for certain complaints to be processed.

4:10 p.m.

I should share with you some conversations I had with the previous chairman. It was not taken to the committee, but the chairman and I concurred in the view that the items that this gentleman raised were not ones which would assist you in the carrying out of your term of reference with this caveat: There was expressed a concern that more time than ought to have been taken was taken to process them.

You have already dealt with that, I would say, in a much more comprehensive way than you would with this gentleman and the group he represents. Their concerns zero in on Workmen's Compensation Board files. Niki Catton and Mr. Morand have acknowledged that a backlog as high as 850 existed in the last fiscal period, which is now down to 430. They expect the duration will drop and will not approach the period referenced by this time frame. In that respect, you have already done the work.

As to the question of attitude, my view is that it is between the Ombudsman's office and this person's office. I resent, on the Ombudsman's behalf and this committee's behalf, receiving correspondence every time a letter is overdue or a phone call is unanswered so that this committee is dragged into the process. I do not believe that--



Mr. Goodman: Every time the allegation is made that a phone call is not answered or a letter--

Mr. Bell: I purposely went even further by giving the person the benefit of the doubt. I do not see that even that is one this committee ought to be dragged into. For the committee to become involved in that, even giving that gentleman the benefit--I do not wish any conclusions to be drawn by that benefit--would really place you in the position of the Ombudsman. You are not a whipcracker because some people perceive that letters have gone unanswered and phone calls have not been returned or that statements have been made to this individual respecting the status of files or investigations, with which a person may disagree.

Putting it quite simply, I would recommend that the committee respond to the last letter to me by referencing a review of the matter of duration and workload. You will be reporting on same in your next report.

And, speaking to the other question of the relationship between this office and the Ombudsman's office, that is a matter between respective offices and this committee will not become involved.

The Acting Chairman: Is that agreed? Any further questions or comments?

Mr. Bell: The only other comment I have is--you may not want to go this far--I think it is regrettable that the person has to use the tone in his letters that he has chosen to use. Whether or not the concerns are justified, tones such as that always invoke a similar response. It seems to me what would be then lost would be the real purpose of the Ombudsman's investigation, and that is to see whether or not a complainant can have some problem resolved. I am thinking out loud. Forget what I have just said, but I had to say it.

The Acting Chairman: You certainly must feel better having said it now.

Do the committee members wish to deal with the last item in this particular section?

Mr. Bell: Yes, I agree. Mr. Goodman, may I suggest this? Do you have the material I gave you yesterday morning?

Mr. Goodman: Yes. I gave it to Mrs. Catton, because it would have fallen under her area. I do not have another copy of it before me.

Mr. Bell: In any event, Mr. Chairman, it has to do with the person's disagreement with the conclusions of the Ombudsman in a report, for he concluded that he could not support the recommendations for the reasons contained in the material.

There was a meeting following that with senior representatives of the Ombudsman's office. Mr. O'Connor, you should know, in terms of seniority at the bar, has more experience

than all the other members of the Ombudsman's staff and any other lawyers in this room combined. He is a very senior and a very capable gentleman. An attempt was made, I take it, to explain the whys and wherefores of the report.

The letter, following that meeting, to Mr. Morand in May of this year, makes it obvious that the individual was not satisfied with that meeting and with information given there. You will see that there is a request in the last paragraph that there be a meeting with Mr. Morand personally.

This communication was passed on to the chairman through another member. There is no specific request made of the committee. We can only assume as of the present time what the individual would like. To the extent the individual disagrees with the report and might ask the committee to somehow involve itself to reverse the conclusions and recommendations, again, you will not do that unless there are exceptional circumstances, because that would be a reinvestigation by you of something the Ombudsman did.

I am sorry. The clerk has corrected me that, through him, the individual has requested a specific appearance to speak to the matters raised in the letter. You will note that this was a case--

Mr. Shymko: Mr. Chairman, I was just wondering whether we will accept procedures of simply telephone calls or personal requests, or whether we should consider anything unless there is a written request or a letter--with all due respect to the individual in the case.

Mr. Philip: It is normal procedure for people to call the clerk and make a request to the committee and for the clerk to report that to the committee.

Mr. Chairman: Would the clerk like to respond to that?  
Mr. White?

Clerk of the Committee: Mr. Chairman, in this particular instance I had a telephone conversation with this individual some time before the committee was even instituted. I advised the person at that point to put as much as possible in writing and to send it to my attention. That was not done.

The person arrived in my office approximately a week and a half ago, and I had a personal interview at that point. The material you have before you was given to me with the request that this person be heard before the committee. I again asked for some sort of formal request but the individual declined to do so.

Mr. Goodman: You will note the chronology, Mr. Shymko. The Ombudsman sent the individual a report on July 22, 1980, in which he found the complaint not to be supported. The complainant then had a personal interview with Mr. O'Connor, to whom Mr. Bell referred and who is the assistant director of legal services, on December 30, 1980. Mr. Morand, following that meeting, then responded to the complainant by letter.



I assume that during the personal interview with Mr. O'Connor the complainant indicated her dissatisfaction with the result. Some of the criticisms are outlined by Mr. Morand in his letter, dated January 7, in which he responds to the criticisms.

This was a request, if you like, for reconsideration of his result. He considered that request and responded in writing as to why he chose not to further investigate the matter. At which point she complains to Mr. Morand on May 25, and then to the committee.

Mr. Shymko:: It is similar to the very first case we had, which is a matter of interfering with the decision made by the Ombudsman. I think we should probably take the same position we took with the first case.

The Acting Chairman: It certainly seems consistent that we do that. Are there any other comments? Are we in agreement?

Mr. Bell: Mr. Chairman, I concur with that. I believe in this case the committee should be as precise as possible when responding to the person that we don't sit as a court of appeal. We don't rehear, we don't reinvestigate and for that reason you decline the request.

The Acting Chairman: I am sure either you or the clerk, or both, would check the correspondence going from the chairman, would you not?

Mr. Bell: We pass it on to the chairman.

I take it that Mr. Morand declined the request the person made for a personal meeting.

Mr. Goodman: Yes. You will note that the four criticisms were basically a reiteration of the comments made to our investigator in the administrative fairness part of the investigation. That is noted on page two of Mr. Morand's letter.

Mr. Bell: Boiling it down, members of the committee, the person has brought the very same information to you that the Ombudsman had and has said, "I don't agree with the Ombudsman's judgement opinion; I would like you to substitute yours for that and give me the relief that I am seeking." We have rehashed what your position is on that.

The Acting Chairman: I think we are in agreement with the action indicated by Mr. Shymko's comments.

If there are no further comments or questions, it is time to call this session to an end. We will adjourn and meet Tuesday morning next.

Mr. Bell: All day Tuesday will be taken up with the Workmen's Compensation Board. On Tuesday morning the chairman, Mr. Alexander, Mr. Warrington, vice-chairman of appeals, Mr. O'Brien, special Ombudsman liaison officer, and his assistant, will be before you to review the matters in the Ombudsman's report and in your report which have to do with Workmen's Compensation Board.

I promise you that on Tuesday you will get into the heart of your function, which is to review recommendation-denied cases. Any frustrations you have experienced in the last day and a half will be removed.

The committee adjourned at 4:22 p.m.





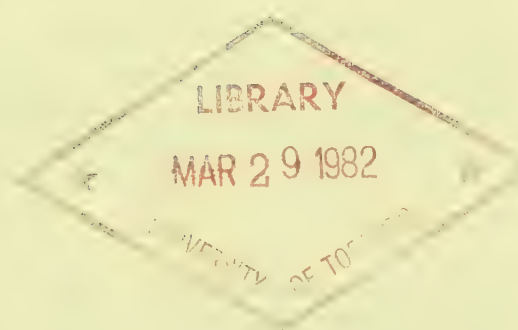
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SELECT COMMITTEE ON THE OMBUDSMAN

OMBUDSMAN'S EIGHTH REPORT

TUESDAY, SEPTEMBER 15, 1981

Morning sitting





SELECT COMMITTEE ON THE OMBUDSMAN

CHAIRMAN: Runciman, R. W. (Leeds PC)  
Andrewes, P. W. (Lincoln PC)  
Barlow, W. W. (Cambridge PC)  
Boudria, D. (Prescott-Russell L)  
Cooke, D. S. (Windsor-Riverside NDP)  
Dean, G. H. (Wentworth PC)  
Eves, E. L. (Parry Sound PC)  
Kells, M. C. (Humber PC)  
Miller, G. I. (Haldimand-Norfolk L)  
Philip, E. T. (Etobicoke NDP)  
Shymko, Y. R. (High Park-Swansea PC)  
Van Horne, R. G. (London North L)

Clerk: White, G.

Counsel: Bell, J.

From the Office of the Ombudsman:  
Catton, N., Assistant Director of Special Services  
Goodman, B., Counsel and Special Adviser to the Ombudsman

From the Workmen's Compensation Board:  
Cain, D., Acting Director, Claims Services Division  
Darnbrough, A. J., Director, Claims Adjudication Branch  
Emmink, A., Assistant Ombudsman Administrator  
Farquharson, D. F., Registrar of Appeals  
O'Brien, L. F., Ombudsman Administrator

LEGISLATURE OF ONTARIO

SELECT COMMITTEE ON THE OMBUDSMAN

Tuesday, September 15, 1981

The committee met at 10:13 a.m. in committee room No. 1.

OMBUDSMAN'S EIGHTH REPORT

Mr. Chairman: I see a quorum. Ladies and gentlemen, could we get under way? I will ask the members of the committee to take a look at your schedules at this part of your book. This morning the Workmen's Compensation Board responses to the committee's eighth report are starting off and we will turn it over to our counsel.

Mr. Bell: Thank you, Mr. Chairman. Before you today are a number of representatives of the Workmen's Compensation Board whom I would like to introduce at the present time. At the table on the far right is Mr. Larry O'Brien. Mr. O'Brien is the commissioner of the board and latterly, for the last two years anyway, Mr. O'Brien has acted as a liaison person between the board and the office of the Ombudsman. I might say, in my opinion, he has a good deal to do with the working relationship that now exists between the respective offices.

Beside Mr. O'Brien is his assistant, Mr. Andy Emmink, who will be speaking principally on behalf of the board today. I should advise members of the board that Mr. O'Brien will retire from the board in the next few weeks. Mr. Emmink will, I understand, assume his responsibilities in respect of matters Ombudsman and matters select committee and I think he has thrown that mantle to good hands.

Also, members of the committee, you should know that here today is the vice-chairman of appeals, Mr. Tom Warrington. We thank you for coming, and as well, the registrar of appeals, Mr. Doug Farquharson, who is--am I right? Is it registrar of appeals?

Mr. Farquharson: Registrar of appeals.

Mr. Bell: Both Mr. Warrington and Mr. Farquharson have been very helpful to the committee in the past in assisting the committee to know and understand the matter of appeal procedures, field policy, decision-making policies and the like.

There are two other gentlemen here, whom I will not introduce because I have forgotten their names and I apologize for that. They will introduce themselves as we get to the matter that they have been asked to attend for.

With that long-winded introduction, let me just tell you where we are going today. I am hopeful, subject to how long you wish to sit this afternoon, of completing all Workmen's Compensation Board matters today. I think we can. You will see that a number of items have been telescoped and combined, and can be dealt with at one time. But in any event, we will be dealing with the board in three separate areas.



The first area will be the responses that the Workmen's Compensation Board must make to the recommendations contained in the committee's last report--its eighth report. They are specifically recommendations four, five and six.

In addition, they are in dealing with another Workmen's Compensation Board matter at pages 11 and 12 of the committee's eighth report, I believe. It made certain observations about a decision the board had taken referable to a complaint and a report and recommendation made by the Ombudsman that has to do with the board's policy of benefit of the doubt and how it is exercised. The committee, in the eighth report, just said, effectively, it has some concerns about the way that decision was taken and wishes to discuss those concerns further with the board. Mr. O'Brien and Mr. Emmink will do that for you.

When we finish that area we will go to the area of the two appendices which the Ombudsman has included in his eighth report, appendices A and B. I can save you all a lot of time weeding through that. There is only one additional matter that is not contained in the first category, and that has to do with an old recommendation made by the Ombudsman and the committee dealing with some legislative amendments to the act, to permit the board to write off, at its discretion, overpayments made to injured workmen; and you will hear Mr. Emmink speak to that point later.

Lastly, we will be dealing with what is really the heart of your function, and I am sure some of you have been wondering up to now, and that is the recommendation-denied cases. This is where you are charged with the responsibility of considering a recommendation that the Ombudsman has made which has been denied by the governmental organization, in this case the Workmen's Compensation Board.

You will hear from both the office of the Ombudsman and the Workmen's Compensation Board as to the whys and wherefores of their respective positions and you must assess, consider and come to a decision whether the Ombudsman's recommendation is to be accepted and recommended to the Legislature, or whether you believe the position of the Workmen's Compensation Board is the one that you find more acceptable.

I am hopeful that we will be able to devote most of the afternoon to the recommendation-denied matter. I should tell you right up front that while the schedule and the agenda list two recommendation-denied cases there will really be one that you deal with in detail.

Complaint number 25 represents complaints of 135 persons--135 separate complaints and investigations conducted by the Ombudsman. The issue and the recommendation made by the Ombudsman is identical to the recommendation that he made on another case in his seventh report and the issue is identical to recommendation number six of the committee in its last report, and that is the recommendation that you will hear later and which some of you may recall from the debate. It was not supported by the Legislature on a vote.

That represents, I should tell you, the very first time,

under the heading of "recommendation denied" recommendations by this committee, that the Legislature has not adopted and approved that recommendation. So you are faced with a decision as to what to do with one of the additional ones and what to do by way of comment, action or anything else, in response to the decision of the Legislature.

So that is what we hope to do today, and with that, may we now deal with board responses to the committee's last report.

Members of the committee, if you could, in your brief, turn to large roman numeral B and small roman numeral b, and, under that subcategory, if you will go to tab number three, and you will see, following that, roman numerals I, II and III. That is where the information is contained for this first part.

Members of the committee, you will see that what I have done is extracted from the eighth report that part of the text that deals with the three recommendations; it is for ease of reading and reference and I believe for this exercise contains all of the information you need to bring yourselves up to date.

Ms. Catton, will you be speaking on behalf of the Ombudsman's office?

Ms. Catton: Yes.

Mr. Chairman: And Mr. Emmink, you will be speaking--

Mr. Emmink: Yes.

Mr. Bell: All right.

Members of the committee, complaint number nine in the Ombudsman's seventh report was considered by the committee last July. The substance of the facts that the committee dealt with is found at pages 42, 43, and 44 of the eighth report, which is with the material that I have just referred you to. Permit me to review a few salient points.

10:20 a.m.

On page 44 you will see after the Ombudsman concluded his recommendation he reported his conclusions and he recommended to the board that its previous decision, the decision which is complained of, be revoked and that the complainant in question be extended the benefit of reasonable doubt and granted entitlement for an accident arising out of and in the course of his employment on April 9, 1976, which incident the Ombudsman concluded aggravated a pre-existing back condition. The Ombudsman further awarded that all appropriate and commensurate benefits be afforded to this gentleman.

You will see in the next paragraph that the board declined to implement the recommendation and did so for the reasons set out later in the paragraph.

I should tell you that it became very apparent to the



committee, as it dealt with this matter in detail last July, that the position of the Workmen's Compensation Board was unacceptable. Putting that another way, putting that in a positive way, it became apparent--and there was a consensus in the room even without a vote--that the Ombudsman's recommendation would be supported by the committee.

The committee undertook a new step last July. For the very first time it took a vote in public as to whether a recommendation of the committee would be accepted, and if so, whether the committee would so report and recommend that to the Legislature in its next report. The vote was passed and accordingly the Workmen's Compensation Board was immediately informed of the committee's conclusion and recommendation and urged to act upon that recommendation as quickly as possible.

You can see from the text of the committee's report that the Workmen's Compensation Board did act upon that recommendation relatively quickly. By the time the committee finalized its eighth report it was able to advise the Legislature that the recommendation had been acted upon and the implementation was totally satisfactory.

Concerning the background, the real reason that was done is that since the committee has dealt with any recommendation-denied type cases--I should not single out the Workmen's Compensation Board--there is a significant time lag between the making of the report and recommendation by the Ombudsman, the decision of the governmental organization not to accept that recommendation, the subsequent reporting of that fact by the Ombudsman in his annual report, the meeting with this committee to consider the issue, the reporting by this committee to the Legislature, the debate and the subsequent implementation. It is not hard to see a 12-month gap in that process.

It was felt by that committee that where the complainant's concerns, on at least the face of matters, required some more immediate action, the committee would, where there was an immediate consensus that it would support an Ombudsman recommendation, would repeat that process again, thereby speeding up the process. It worked very well with this case and in my opinion the board should commended for its quick response in accepting that recommendation.

Mr. O'Brien: I think, Mr. Bell, there is one circumstance that the committee should understand in cases of this particular kind. In all matters of claims before the compensation board, the board treats the employer as a party of interest and when we have a recommendation that involves the interest of the employer, who has not had an opportunity to consider the position in which the board is placed relative to the recommendation of the select committee, the board, in the interest of not being involved in a challenge on the basis of natural justice, feels that it must avail the employer of an opportunity to present his objections, submissions, relative to the implementation of the select committee's recommendation.

There are a great many cases in which the employer really

hasn't any objective position. In the particular case where the recommendation was made and voted on by the select committee, the employer had vigorously opposed the allowance of this particular claim throughout the whole of the board's adjudication process. The board is determined that we are not going to be in a position where a court could find that we have proceeded without giving the employer the appropriate opportunity to deal with the matter as a party of interest in the claim. Hopefully that won't happen often, but if it does, it will be the position of the board that we cannot proceed to implement the recommendation without giving the employer an opportunity to present its position to the board. Thank you.

Mr. Bell: Thank you, Mr. O'Brien. Members of the committee, just to give you some further background reference, in this committee's seventh report starting at page six and running through page 10, dealt with the matter of the Workmen's Compensation Board responding, if you will, to recommendations of this select committee. Some of you may recall there was some discussion in 1979 between this committee, the Minister of Labour, the Ombudsman and the Workmen's Compensation Board as to whether, or to what extent, the Workmen's Compensation Board was under an obligation to implement a recommendation made by this committee.

I think initially, regardless of whether it was adopted and approved by the Legislature, in the material the committee referenced a letter written by the Minister of Labour in July 1979 to the then chairman of the board, Mr. Starr, where he advised the board must "be particularly responsive to recommendations of the Ombudsman that receive the support of the select committee on the Ombudsman." He then speaks about his direction for procedure between the Minister of Labour and the Workman's Compensation Board to prepare, formulate formal responses to the committee.

What is also interesting, and this is relevant when we get to the discussion of your recommendation number six in the last report--Mr. O'Brien may want to comment upon this--is when Mr. Starr appeared before the committee at that time, he assured the committee that when it made recommendations to the Legislature, those recommendations would be implemented by the Workmen's Compensation Board.

I don't believe I am overstating what Mr. Starr has said and I don't believe the committee overstated it in its report. So that has been the background of the Workmen's Compensation Board's position in respect of your recommendations I guess up to but not including recommendation number six, about which we will have more to say.

10:30 a.m.

I do not have anything further to deal with recommendation number five, under tab I. I think that fairly states it. It is there more to advise the members of this new procedure the committee adopted last time and very successfully so. It is fair to say that where similar circumstances again present themselves, you can consider whether to make an immediate recommendation for some sort of action.



If there are no questions by the members of the committee, I will turn now to the next item.

Under II, you will see I have referenced for you complaint number 28 in the Ombudsman's seventh report in respect of which at page 50 of this material, the committee's last report, recommendation five was made to the Workmen's Compensation Board.

Again, for further background information, when this report was debated in the House on May 14, 1981, particularly Hansard reference page 703, which members of the committee you have in your material under part C, letter i, II, which I will be turning to in a moment, the minister, on behalf of the board, accepted the recommendation and advised that it would be implemented. Since that time, the committee has received no word as to when, or to what extent the recommendation has been implemented, and with that, Mr. Emmink, I will throw it to you to advise the committee what has happened in the meantime.

Mr. Emmink: In this case, the board accepted entitlement and processed benefits to the complainant in the amount of \$10,059.44. This represented temporary total disability benefits from October 4, 1975, to October 18, 1976, and partial disability benefits at the rate of 50 per cent from October 18, 1976, to December 31, 1976. The man has an appointment for a pension assessment on September 24 of this year.

Mr. Bell: You are still implementing the recommendation?

Mr. Emmink: Yes, he has been paid temporary total and temporary partial disability benefits, and it now remains to be seen whether or not he qualifies for a permanent disability award.

Mr. Bell: In the past the board has responded in writing to these recommendations, I think in almost every case, in the form of a subsequent decision by an appeal board panel. Do I detect, Mr. O'Brien, or Mr. Emmink, that there has been a change in the in-house procedure? That there was not a subsequent board decision in this case?

Mr. Emmink: That is true, Mr. Bell. In this case a letter was written to Mr. Morand and to the minister.

Mr. Bell: Advising that it would be accepted?

Mr. Emmink: Advising him that the claim would be accepted.

Mr. Bell: Could either the Ombudsman's office, or your office, before the end of the day provide the committee with a copy of that letter so that it has something in writing recording the implementation?

Mr. Emmink: I can provide you with a copy of the letter that went to the Ombudsman, if you like.

Mr. Bell: Please, if you would.

Mr. O'Brien: Perhaps it might be best to demonstrate that it was accepted by minute of the corporate board.

Mr. Bell: All right. You might table with us, if you would, maybe not today, but subsequently, a copy of that minute.

Mrs. Catton, do have you anything to say in respect of the manner in which the board has implemented their recommendations?

Ms. Catton: No, as the board has implemented to date part of the recommendation, and it is an adequate implementation of our recommendation to date, and we will have to wait and see what happens with the permanent disability benefit.

Mr. Bell: All right, but let us deal with what is left now. The recommendation which is at page 50 of the material under this part, speaks to the "complainant should then be granted a permanent disability award in an amount to be determined by the Workmen's Compensation Board."

It is agreed that the board has the discretion to assess.

Ms. Catton: That is right.

Mr. Bell: Provided, however, that we are not into a situation that they do not assess zero. Is there a possibility of that?

Mr. Emmink: That is always a possibility, Mr. Bell. We can only award permanent disability benefits in accordance with the findings of the examiner. If the findings indicate that there is not permanent disability then, of course, we will not be able to award a permanent disability.

Mr. Bell: Okay, I think we better leave it this way then. If, as, and when that assessment is made, and a decision taken, would you advise the committee in writing--

Mr. Emmink: Yes.

Mr. Bell: --through my office as to the results and give a copy to the Ombudsman's office so that they can assess it, and advise the committee subsequently whether--just advise them of their comments.

Mr. Emmink: Yes, I can do that.

Mr. Bell: Members of the committee, I would suggest that two things flow: To the extent the Workmen's Compensation Board has implemented the recommendation by affording this person benefits, they have fully complied with the recommendation. To the extent that they have arranged for an assessment to be made of permanent disability, they have complied.

What remains is that assessment, and if the assessment is zero, it would then remain for you to consider whether in the circumstances that is an appropriate implementation of the recommendation.



Mr. Cooke: If the Workmen's Compensation Board did assess zero in this particular case, and the Ombudsman was then advised of that, would the Ombudsman then, since there would be a new disagreement, do their own assessment, and recommend to the committee? How can this committee ever decide what a percentage disability should, or should not be?

Mr. Goodman: Well, if I could respond, Mr. Bell. The answer is that the committee should not, and neither should the Ombudsman. We have not. The Ombudsman, you may recall, recommended, and this is referenced at page 47 of the select committee's eighth report, and the recommendation included--I am referring to the last full paragraph--a recommendation that the complainant should then be granted a permanent disability award in an amount to be determined by the Workmen's Compensation Board.

Mr. Bell has already indicated that the select committee supported that recommendation, and that is why the practice of the committee in the past has been, notwithstanding its support of our recommendation, to ask the Ombudsman whether he is satisfied before the committee indicates whether it is satisfied with the response to its recommendation, whether the Ombudsman is satisfied. It is for that reason that Mrs. Catton reserved judgement on implementation of that part of the recommendation.

At that time, we will, I assume, be asked by the select committee whether the Ombudsman is satisfied with the implementation, and depending upon what the Workmen's Compensation Board does, of course, will respond accordingly.

Mr. O'Brien: Mr. Chairman, I would like to suggest to the committee very seriously that when they are considering cases of this kind that they should not make a recommendation that a permanent disability award be granted. The question of whether there is a permanent disability is a medical finding, and I think it would be much more appropriate of the committee to recommend that consideration be given and an award granted for any residual disability that may be assessed.

You put the board in a very awkward position when you recommend that somebody be given a permanent disability award, when the medical findings turn out that there is, in fact, no residual disability as the result of the accident. There should be a recommendation that it be considered and assessed.

Mr. Bell: Mr. O'Brien, if I might respond to that. I agree that where the committee is about to decide to make a recommendation on its own, removed from an Ombudsman recommendation, it ought not to get into the medical assessment business. It ought not to get into the medical findings business.

10:40 a.m.

However, where the committee considers a specific recommendation made by the Ombudsman which contains the very recommendation or the very matter of a permanent disability award as this one does, the committee has no choice if it decides to accept the Ombudsman's recommendation, but to phrase it that way.

To do otherwise would be not to support the recommendation of the Ombudsman.

I think what you may be saying to the committee, or through the committee to the Ombudsman, is they ought not to be in the medical assessment business and that is an issue that your offices may have had dialogue on, and I am sure you will continue to have dialogue on it.

But where the Ombudsman, for reasons which he is able to support in his report, makes a recommendation that a permanent disability award should be made, but leaves it to the board to assess the amount of that award, I think this committee would have some difficulty in extracting that part of the recommendation.

Ms. Catton: Mr. Bell, I would like to comment to the committee members that, when the Ombudsman makes a recommendation, he considers whether there is evidence that a permanent disability exists. He does not make a recommendation as to the quantum of that disability and the assessment of the disability is left to the board.

You are talking about two different things. One is the existence of the permanent disability and the other question is the amount. In this case, the Ombudsman felt a permanent disability did exist. Now the question is to determine the amount of such a disability.

Mr. Bell: Mr. O'Brien, if you take that example to its logical extreme, what you are really saying is that the Ombudsman ought not to make any recommendations to the Workmen's Compensation Board that a decision be changed, because every recommendation he makes goes to a variance or revocation of a previous decision which, of consequence, requires benefits to accrue that were not awarded previously. That is always based upon a medical assessment in some way or a judgement based upon medical evidence.

Speaking for myself, I do not see any substantive difference between the Ombudsman making conclusions about a permanent disability of an award than any other type.

Mr. O'Brien: I think you are right, Mr. Bell. We shall explore it with the Ombudsman. But let us have it understood that we cannot be in the position where the Ombudsman is imposing the medical judgement of whether or not a man has a residual disability as a result of his accident.

A permanent disability, in terms of a residual disability as a result of an accident is a medical judgement and--

Mr. Cooke: It is a matter of judgement (inaudible).

Mr. O'Brien: But the Ombudsman, in my mind, is not competent to make one.

Mr. Goodman: The Ombudsman, to be fair, has never suggested he was competent to make such judgements. The issue



before the Ombudsman is whether the board acted unreasonably on the medical evidence before it. The Ombudsman here so concluded and, rather than making a recommendation under 3(a), that the matter be referred for further consideration, advertently recommended, pursuant to section 22(3)(c), that the decision be varied. Let us not be under any mistake as to that.

Mr. Bell: Nobody is. I think we can shorten it.

Mr. O'Brien, the matters you just raised, for dialogue between the offices, are of course matters that presumably have been and will be discussed, and hopefully resolved, between your offices before they get here, so that, to the extent you have an agreement to disagree, that is all we will worry about because, members of the committee, we have had some dialogue on previous occasions with governmental organizations appearing before the committee and raising issues or asking questions which more properly should have been asked of the Ombudsman's office during that process.

You have assisted the committee, Mr. O'Brien, in alerting some board concerns in that regard. I would say it is an age-old problem that, as long as the Ombudsman deals with Workmen's Compensation Board matters, will always be with you or us.

I have no further questions or comments of either the Ombudsman's office or the board, Mr. Chairman. If members of the committee might, I would suggest that the recommendation does speak to the fact that a permanent disability finding has already been made and we are really into the quantification stage. It seems to me that zero was not contemplated either by the Ombudsman in his recommendation or the committee in its recommendation.

Mr. Shymko: This is a matter of time, but the medical evidence can be researched and may not be forthcoming until, let us say, five years from now. In other words, whether or not the complainant's condition is declared stable or is stabilized may be a time factor involved before we establish the permanency of his disability. Is there a time factor here?

Mr. Emmink: He would not be assessed, Mr. Shymko, until the board was satisfied his condition had become static.

Mr. Shymko: But the board may not be satisfied after the first assessment.

Mr. Emmink: That is true. It happens sometimes that, when we bring a person in, we find his condition is not static and the rating would be deferred.

Mr. Shymko: It could be deferred in perpetuity.

Mr. Emmink: I suppose theoretically that is possible, but I have not seen it happen.

Mr. Shymko: I find it puzzling that I still find sort of a contradiction in that particular recommendation since it speaks of temporary disability benefits that should continue until such

time as medical evidence indicates that a complainant's condition is stabilized.

I would imagine that, if the condition is not stabilized, that permanent disability should not be awarded. I cannot see in my judgement where the factor of a permanency is already established and there is a condition for that permanency.

It seems the Ombudsman has ruled and the committee has established--in other words, a verdict has been passed already that the man is permanently disabled and yet we have put a medical condition.

Mr. Emmink: We have to determine the extent of the permanent disability and we can only do that through an assessment.

Mr. Goodman: We are just talking about a question of extent, Mr. Shymko.

Mr. Shymko: Oh, I see, it is a question of extension only.

Mr. Goodman: Of extent of disability.

Mr. Emmink: How much is it? Is it two per cent, five per cent?

Mr. Goodman: The board's practice quite reasonably is that they cannot make that assessment until the condition is stabilized. No matter what the permanent disability is, they are going to wait until it stabilizes.

Mr. O'Brien: I think stabilized is a bit of an awkward word.

Mr. Shymko: This is where I find a problem in understanding the professional--

Mr. O'Brien: So is the word static in this sense. There comes a time when the board is satisfied that the man's improvement--you are not going to improve any more, you might very well get worse.

At that time, when the board is satisfied the man has reached that state, that it is going to be permanent although it may deteriorate, then he will be rated, always understanding that, if his condition deteriorates, he can be rerated and very frequently is. If the medical information indicates that his condition has deteriorated, his pension under our present act would be increased.

Mr. Cooke: But in the meantime, until his condition stabilizes, he is receiving his temporary benefit.

Mr. Dean: My question is also to inquire what is the temporary benefit anyway and on what level is this assessed?

Mr. Emmink: Temporary benefits are paid for that period



of time when a man is recovering from the acute injury.

Mr. Dean: What are they, though?

Mr. O'Brien: Seventy-five per cent of the man's accident earnings.

Mr. Dean: So it is not as if he is not getting anything in this period.

Mr. Emmink: In this case, the benefits expired or were closed on December 31, 1976. Now, I do not have the information with me as to why they were closed on that date, but it may well have been that he returned to work.

10:50 a.m.

Mr. Dean: So actually at the time the report was made he had not been getting any temporary benefits?

Mr. Emmink: No. He has not been receiving benefits since December 31, 1976.

Mr. Dean: And he is still not?

Mr. Emmink: He is still not. That is true.

Mr. Dean: What would happen, then? Does he get anything retroactively?

Mr. Emmink: Yes. If a pension is awarded it will be paid back to the time the temporary benefits were closed.

Mr. Chairman: Even if he has been fully employed during that?

Mr. Emmink: Even if he has been fully employed, yes.

Mr. Goodman: As a matter of fact, he has not been fully employed. He has not been employed.

Mr. Dean: I presume we can only assume that the temporary benefit was cut off because the board thought he was not entitled to it. Is that the reason?

Mr. Emmink: I do not have the file with me so unfortunately I cannot say exactly why it was closed.

Mr. Dean: Is that the entire reason? Is there a magic date, at the end of a certain year you cut him off?

Mr. Goodman: Perhaps we can assist, Mr. Dean.

Mr. O'Brien: It would be on the basis of the medical report from the doctor indicating he is no longer totally disabled.

Ms. Catton: Mr. Dean, say somebody broke their leg and their leg was in a cast, they would be on temporary benefits

during the time their leg was in the cast but if, because of the nature of the fracture they were left with a permanent limp or something else, the temporary benefits would cease when they were able to go back to work and the cast was off the leg. The permanent benefits would be paid him for the limp that existed that resulted from the break in the leg.

Mr. Dean: And the amount, again, would depend upon how debilitating it was?

Ms. Catton: That is right.

Mr. Cooke: Would not this individual for the period of time, using the example of a person in a cast, who had lost his job or was not immediately back in the work force, then normally a rehab file would be opened and the person would be on temporary total--

Mr. Emmink: In the normal course of events that would quite likely occur if it were evident the man had a permanent disability but, in this case, the claim of course was allowed in some considerable retrospect some four or five years after the event. So the same circumstances do not exist.

Mr. Cooke: We can only assume that the claimant is happy with the back payment but I cannot understand why the individual would not be getting some form of temporary benefits between the end of 1976 and now, until he is assessed.

Mr. Emmink: It may well be he has chosen to leave the work force for other reasons not related to his injury.

Mr. Shymko: I wonder whether or not we may be tempting the particular complainant since the temporary disability is much higher than that of a permanent disability awarded. My understanding, in terms of the compensation, is the complainant does receive more if his benefits are temporary rather than permanent.

Whether or not he could question the stability of his condition by questioning, let us say, the assessment you may make and that may again go before the Ombudsman and appear before us, his condition may, according to him, be deteriorating.

To what degree does the Ombudsman have the power to question medical evidence and then give us the same recommendation so that we deal with medical evidence that may be supporting the fact that his condition is stabilized, while he may question that medical report and assessment and say it is deteriorating and then present it before the Ombudsman.

Let us say the Ombudsman supports the complainant: To what degree do we move into this area of medical evidence and pass judgement where the board, I am sure, with all of its experience, would probably have a better judgement of assessment than perhaps members, certainly of a committee?

Mr. Goodman: That is a very valid concern, Mr. Shymko,



one which the Ombudsman recognizes. That is why the Ombudsman does not deal with medical evidence, nor does the committee, apart from determining, in the case of the Ombudsman, whether the board acted reasonably on the medical evidence given to it, and apart from this committee determining whether or not the board has adequately implemented the committee's recommendation on the evidence before it.

Mr. Cooke: Then how does the Ombudsman deal with a case that comes before it; as mentioned to us in some of our other briefings, a lot of the cases that come before you are people who are not satisfied with the percentage granted. That is something--how do you deal with those cases? That must be 50 per cent of my case load.

Mr. Goodman: Yes. The most that the Ombudsman would do in a case like that is to suggest that the percentage amount that has been awarded does not adequately reflect the injury, and he would recommend that the board reconsider and grant more than what has been granted; but he would not give a percentage.

It's a very difficult case, I agree with you. It's a lot easier when you are dealing with a zero base and we can say that certainly zero isn't proper. But even in those cases, as in this one, the Ombudsman does not recommend a certain percentage, nor should he. As Mr. Shymko recognizes, the board has the authority so to do, and these matters should be left to the board.

Mr. Cooke: It would be a lot easier if we went the route of employable versus unemployable, but--

Mr. O'Brien: As a matter of information it's important to understand that, just in the sense of dealing with this case as an example, the man has an appointment to be assessed for his permanent disability. If there is an assessable disability an award is made in some percentage of the whole man relative to that disability. That in itself is appealable.

Now, as Mr. Goodman has said, the Ombudsman does not concern himself at this stage with that assessment. The man may appeal that assessment. All these permanent disability awards are always open at the board. If the man is reassessed he may appeal it. If the percentage is sustained at the appeal board level he once again has a complaint that he can take to the Ombudsman on a new decision.

Mr. Goodman: Except, Mr. O'Brien, that the committee, as I understand the committee--we ran into this problem before where entitlement was granted at a rate of zero: in other words, the board accepted entitlement and made a nil award--the committee, to my view, quite properly didn't say to the complainant, "Even though the committee has supported the Ombudsman's recommendation you still must go through all your appeal procedures on that adjudication, then come back to the Ombudsman and then the Ombudsman will go before the committee again." The committee quite properly, in my view, said to the board, "This is not an adequate implementation of our recommendation."

I'm sure we can all see the inequity that would result to the complainant if, having gone to the Ombudsman, the Ombudsman having supported the complaint, the committee having supported the Ombudsman, the Legislature having supported the committee, what results is that the complainant has to go all through his appeal procedures again and come back to the Ombudsman.

I suggest to you that that was not what the legislature had in mind when they permitted the Ombudsman to come before the Legislature as his court of last resort under section 22. That would defeat the purpose of permitting the Ombudsman to file his report, of course.

Interjection: I agree.

Mr. Chairman: Are there any more questions on this case? Anything else?

Mr. Bell: No, I don't, Mr. Chairman.

Mr. Chairman: Can we move on to the next case?

Mr. Bell: Okay. The next one is going to take us some time. May I suggest that we get rid of this overpayment matter first rather than tag it onto the end?

Mr. Chairman: Certainly.

Mr. Bell: Bear with me, members of the committee. The Ombudsman in his eighth report--and I believe it's appendix A--referred to an outstanding recommendation of his, and in fact an outstanding recommendation of the committee's, whereby it goes all the way back to complaint number 31 in the committee's third report. Members of the committee, if you want a reference in your brief it is C(g)(6) under that, and--

11 a.m.

Interjection: There's a small one, two and three. Is it one of them?

Interjection: Appendix 2.

Mr. Bell: Yes, it is. It's appendix 2. Oh, I'm sorry. It is found at III, members of the committee, under six. It's actually Ombudsman's report number two, complaint number 132, which references recommendation number 31 in your third report.

Now, to give you briefly some background. You will recall that you heard reference, when we met with the Ombudsman and his staff at their office last week, to a case in which, by administrative mistake, this person had received for a period of almost 12 months a benefit twice that which this person had been assessed as eligible for. The mistake was uncovered by the board, and the board communicated with the person by saying simply: "We paid you by two. Please pay us back."

As a result of its deliberation over this case the committee



recommended in its third report that, to afford the Workmen's Compensation Board maximum discretion in these circumstances for humanitarian or other good and sufficient reasons, it be given statutory authority to write off an overpayment.

The prevailing view at the time was that the present legislation does not give the board the ability to write off an overpayment, so they felt it necessary to have that stated explicitly. Since that time--this goes back, I guess, to 1977--we have asked the board each year when that amendment was coming forward. The board has said "Not yet."

Mr. Emmink, what do you have to say today?

Mr. Emmink: We finally have something, Mr. Bell. It's contained in the white paper on workmen's compensation in the draft legislation new act.

Mr. Bell: This is the Weiler report. No, I'm sorry: it's the result of the Weiler report.

Mr. Emmink: It's based on the Weiler report. This is contained under section 66(2) in the new act. I have a copy here that I can file with you. I have copies for each of the members, if you would like.

Mr. Bell: Yes, if you'd ask the clerk to take them from you and distribute them to the members, please.

Mr. Emmink: This section gives the board the discretion either to write off the overpayment recovered or reduce or suspend it.

Mr. Bell: Maybe you can just wait until we all get a copy so we can follow along with you. Where is it specifically?

Mr. Emmink: Right at the bottom.

Mr. Bell: Oh, you have boxed it in. Is it subsection 2?

Mr. Emmink: That's right.

Mr. Bell: It speaks to both sides: It speaks to the writing off of an overpayment or to taking steps to recover an overpayment either by setting off or by taking legal action.

Do I take it that the procedure that the committee recommended to the board previously respecting how it deals with persons where overpayments have been discovered-- In other words, you don't just come in and present them with a schedule for repayment immediately. I think you would--

Mr. Emmink: No. We would--

Mr. Bell: The recommendation was, and I think the procedure implemented was, that ability to pay be assessed before any decision is made.

Mr. Emmink: That's right. We wouldn't want to create any undue financial hardship. If a person who has been overpaid is not working and has no income, then of course we wouldn't make any demands that he repay it at that time. But if in the future, for instance, he should again become employed or become entitled to further compensation, then we might try to work something out with him whereby he could repay all or at least a part of the overpayment.

Mr. Bell: Now, this is only a white paper. It's by no means draft legislation.

Mr. Emmink: That's true.

Mr. Bell: What position has the Workmen's Compensation Board taken, or what position do you intend to take, with respect to this proposed amendment?

Mr. Emmink: I don't really know, Mr. Bell, but I haven't heard of any opposition to this particular section of the draft act.

Mr. O'Brien: I think the amendment, as in the white paper, is in fact the amendment that was prepared by the board some time ago.

Mr. Bell: Okay. And you know of no reason at the present time why, if, as and when legislation is tabled, this section, substantially as worded here, would not be included.

Mr. O'Brien: I think it's one of the sections that's almost certain to live through the process. I think perhaps it's important to state, of course, that there's a difference of legal opinion; but the board has always maintained that its general powers permit it both to write off and to recover at the present time. There's a difference of legal opinion on that.

Mr. Bell: That's what I was saying, members of the committee. There has been a difference of legal opinion. I for one believe the board already has that ability. I would be amazed if a corporate creature of statute could only pay out and could not receive back. It's inconsistent with any legal principle that I am familiar with.

Nevertheless, if the board felt more comfortable having it specifically--

Mr. O'Brien: As did the select committee.

Mr. Bell: As did the select committee. As did the Ombudsman.

Mr. Dean: Can that be taken off the agenda, Mr. Bell?

Mr. Bell: We just dealt with it. It's going to continue in the Ombudsman's appendices hereafter until that legislation becomes law. From the committee's standpoint I think it just continues to monitor the legislation. At such time as it is passed



you can strike it off your books. I don't have anything further to add.

Mr. Shymko: With reference to counsel's comment that it was understood that you had this power to recover overpayments or write them off: Have there been cases? In other words, has this been done in the past although there was no--

Mr. Emmink: Where overpayments have been written off?

Mr. Shymko: Yes.

Mr. Emmink: Oh yes.

Mr. Shymko: It has been done. You had commented that you do take into consideration humanitarian concerns or compassion because of the socio-economic state of a particular complainant, or the family in this case. Is there a reason why you would not, perhaps, establish criteria for when writing off an overpayment would take such factors into consideration, and what the considerations should be in setting that off? Or is it for reasons of flexibility that you avoid it?

Mr. Emmink: When you deal with each case on its individual merits I think that's rather a difficult thing to do. Some people might be placed at a disadvantage by that. It's always better, I believe, to maintain some flexibility.

Mr. Shymko: Finally, I guess you would make a distinction, when an overpayment is discovered, between an overpayment that resulted from the fact that false documentation had been presented by the complainant or the recipient of benefits and an overpayment that resulted from a mistake by the board itself, perhaps in making the initial assessment which gave the (inaudible).

Mr. Emmink: That would always have a bearing, Mr. Shymko, but I still think that the ability of the person to pay is one of the prime criteria. You can't get blood out of a stone.

Mr. O'Brien: It's important to state that all the relevant matters in the situation are in fact considered. Generally, if it's an administrative mistake on the part of the board the board will not make any attempt to recover it. I say "generally," but there is a policy statement that was prepared after this issue was first raised by the Ombudsman.

It was discussed with the select committee. It was also discussed with the resources development committee, and agreed on at both committee levels in terms of that policy statement, which is available in the manual of the board.

11:10 a.m.

Mr. Cooke: This is on a little different subject; that when the complaint went before the Ombudsman on the Ontario student assistance program, where there were literally hundreds of students that were overpaid as a clear result of an administrative

Mr. Emmink: That's right. We wouldn't want to create any undue financial hardship. If a person who has been overpaid is not working and has no income, then of course we wouldn't make any demands that he repay it at that time. But if in the future, for instance, he should again become employed or become entitled to further compensation, then we might try to work something out with him whereby he could repay all or at least a part of the overpayment.

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Mr. Bell: We just dealt with it. It's going to continue in the Ombudsman's appendices hereafter until that legislation becomes law. From the committee's standpoint I think it just continues to monitor the legislation. At such time as it is passed



The Ombudsman, in his initial investigation, spent some time on the issue of deterioration. The committee did not support any part of the Ombudsman's recommendation dealing with that factor. The medical evidence, in the committee's opinion, was not conclusive to the extent that an opinion could be considered reasonable.

What the committee did do, however, is to zero in on what, it became apparent very quickly, was the real issue of the case. That is referenced in the second full paragraph on page 51, where it is stated in the second sentence: "What is more"--let me read the whole thing.

"The question of the nature and extent of the deterioration suffered by this person since 1974 is, in the opinion of the committee, rather academic. What is more significant is the conclusion reached by the Ombudsman after his investigation, that the impairment to the complainant's earning capacity, due to his accident, has been substantial."

Going on down that paragraph, what is referenced is the opinion formulated by the Ombudsman after his investigation that the decision to deny the complainant benefits was unreasonable and his recommendation is set out there pursuant to the act that the board revoke its decision and grant the complainant an increase in his permanent partial disability award of 20 per cent, pursuant to section 42 of the act.

You will see that in the next paragraph at the top of page 52 the board declined to implement the recommendation on two grounds. The committee is going to have to improve its grammar, there is no such word as "firstly." In any event, the prevailing medical opinions did not support a deterioration of the complainant's low back disability. We do not have to deal with that because that is not the issue remaining. The second reason, however, is.

The board declined to employ the provisions of section 42 of the act in this case on the grounds that it did not recognize that the impairment of earning capacity was significantly greater than is usual for the nature and degree of the injury suffered and that the complainant had removed himself from the labour market and declared himself totally disabled.

Going on that page and over to page 53 you can see that the issue is joined between the Ombudsman and the board as to the interpretation of section 42(1) which is set out there and what is meant by the phrase "where permanent disability results from the injury, the impairment of working capacity of the workman shall be estimated from the nature and degree of the injury."

I think, fairly stated, the Workmen's Compensation Board, in its response to the Ombudsman and before this committee, held to the view and to the interpretation that the impairment of earning capacity was determined solely from and could be determined only from a clinical assessment of the medical injury. There was no discretion to consider any other circumstances under section 42(1). The Ombudsman, on the other hand, takes the view that the

section, as worded, permits the board to consider any and all relevant evidence in assessing the nature and the degree of the disability.

This example may assist you. If Glenn Gould injures his right hand, the impact upon Glenn Gould's earning capacity is much greater than if John Bell injured his right hand; as all of you know I do not speak with my right hand. From the board's point of view, a right hand would be assessed on a clinical basis and an assessment of earning capacity would flow therefrom. Regardless of whether it was Glenn Gould or John Bell, the percentage would be constant. The amount, of course, would depend on what the earning was but that is not relevant to our consideration.

The Ombudsman, on the other hand, is of the view that section 42(1) permits the board to consider it to be Glenn Gould's hand and to say that Glenn Gould is perhaps 100 per cent disabled because he cannot play the piano. That is, I think, fairly stated and in simple terms, where the issue lies.

Mr. O'Brien: I would like to add something there, Mr. Bell.

Mr. Bell: Feel free to jump in any time. I want to make sure the record is complete.

Mr. O'Brien: The recommendation of the Ombudsman goes a little farther than that because it would also provide that if there was no loss of earnings for yourself or for Glenn Gould, then there would be no PD award.

Mr. Bell: I am glad you brought that up. That is correct and the Ombudsman's representatives did confirm that. Now, members of the committee, as I am sure you know much better than I, this section as historically implemented or applied permits a person to be assessed for an injury and to receive benefits, notwithstanding that person may be able and is able to return to the very job that he had prior to the injury, regardless of whether he is able to return to 100 per cent effectiveness.

That, we are told, is a practice fairly extensively followed in Ontario. There are a good number of workmen who are receiving benefits or moneys supplemental to their salary in this way.

11:20 a.m.

Mr. O'Brien: By way of permanent disability.

Mr. Bell: By way of permanent disability. The interpretation urged on the committee and the Legislature by the Ombudsman effectively would eliminate that provision and there would be an assessment in the more general sense of the word, in the more judgmental sense, and it would apply for all time and it would be related, for example, in addition to clinical assessment, to what that person does.

When the assessment is made, if the person has returned to work to full effectiveness, that would probably be the determining



factor to deprive that person of any amount which he today receives. I am being a little circuitous on that, but it is an important point.

Mr. Goodman: Just to amplify the point, the reason the person would receive no permanent award, by the Ombudsman's interpretation, is quite simply because he has suffered no impairment to his earning capacity, which the Ombudsman feels is the test which the Legislature has given to the Workmen's Compensation Board under 42(1).

Professor Weiler--and I am sure we will deal with this in detail later--realizes the ridiculous result that follows if, in determining whether there has been an impairment to earning capacity, the board is limited solely to a clinical assessment of the nature and degree of the injury.

Mr. Bell: Can we leave Weiler on the shelf for a minute because--

Mr. Goodman: I wanted the members of the committee to understand why if there is no wage loss the worker would not be granted an award. It is because there is no impairment to his earning capacity, that is the reason.

Mr. Bell: I am anxious to get this background chronologically completed so that everybody is current. That is the issue. The committee, during its discussions with the board and the Ombudsman's office, in trying to assess and consider which of the positions it could accept, reviewed with the board--Mr. O'Brien in particular--certain directives of the board which were intended to guide the staff in the application and interpretation of section 42(1).

In a summary way, the committee concluded after a review of those directives that the board had interpreted 42(1) historically in much the same way as the Ombudsman was urging the board to do in this case. At least on the face of the directives--bear in mind the board's view was that one must only have regard to the clinical assessments.

The directives considered, which are referenced at the bottom of page 53 and the top of page 54, the first paragraph speaks to one of the directives, being the one dated January 29, 1980. It was available to the board when it formulated its responses to the Ombudsman, but from sections 10 and 11 of that directive, the committee concluded those sections that totally contradicted the board's interpretation of section 42(1). The directive clearly establishes that any assessment of benefit relative to impairment of one's earning capacity is not inextricably tied to a clinical assessment, but may be derived from a number of sources or particularly enumerated in section 11 of the directive.

To be fully absolutely fair to the board and to afford it all opportunities to assist the committee, it permitted Mr. O'Brien and the board to provide it with further materials and any appropriate comments as a result of what might have been then

apparent to some as a revelation as to that directive's effect. Accordingly, as you will see, in August of last year the committee received what is fairly stated now as the current directive respecting section 42(1), which the board submitted to the committee with the advice that this is consistent with their interpretation which is that assessment is based only on a clinical rating.

The committee considered that further and, as you can see at the bottom of page 54, stated in effect that there was nothing in there to change its opinion that the board was not bound only by clinical assessment. The very last section of the guidelines under general directives stated that "permanent disability cases which do not meet the general criteria should be individually judged and dealt with equitably and fairly having regard to all circumstances."

The committee then gets into the substance of its opinion when it says at the bottom: "There is no requirement in the directive or in fact in the legislation which ties benefits under this section solely to the clinical assessment of the injury. The committee supports the recommendation of the Ombudsman particularly as it relates to his interpretation of section 42(1).

"The Workmen's Compensation Board has historically interpreted this section as permitting the payments of benefits to workmen in amounts which are proportionately higher than the actual impairment of earning capacity. It must follow that their interpretation to be truly equitable must also permit the payment of benefits which actually reflect the impairment of one's earning capacity. Accordingly, the committee recommends that the board revoke its decision and increase this gentleman's permanent partial disability award of 20 per cent."

As is clear from the text, the committee's conclusion and reasons for supporting the Ombudsman's recommendation were based substantially upon how the board had itself historically interpreted and applied the section rather than a more legalistic--if you will--interpretation or analysis of the section.

The Workmen's Compensation Board and the Minister of Labour (Mr. Elgie)--because I assume some concern was expressed within the board and to the minister after receiving the report and before it was debated in the Legislature--requested independent legal opinions of two eminent legal scholars in this province, John J. Robinette, and the former Deputy Attorney General, Alan Leal, the former chairman of the Law Reform Commission of this province.

Both of the gentlemen gave an opinion, the bottom line of which is that section 42(1) only permits an assessment to be based on a clinical rating. In other words, it supports the initial position taken by the Workmen's Compensation Board in its response to the Ombudsman. In other words, and what flows from those opinions of course, is that the board may not consider other circumstances as part of its assessment.



When the report was debated in the House on May 14 last, the minister tabled both of the letters. In fact he read them into the record--made them part of the proceedings--and at page 716 of the Hansard, I have included Hansard in the material. It is under the recommendation denied cases, and it is actually under C(h)(ii), wherein the material referable to the Ombudsman's recommendation-denied case number 25 is included. I think if I had to do it over again, I would include it with this material on complaint number 30, but in any event just bear with me. While you are finding it, I can read this for you.

I might say also while you are finding it, I commend the debate to everybody who is interested in what this committee does. The exchange between the minister and Ross McClellan, in particular, as to what this committee is all about is I think very accurate and quite profound.

The debate was reached at a level not previously attained, and just to say that nobody has more respect or understanding for this committee than Bob Elgie, who was one of its previous members. I am sure that he did not take the position he did lightly. It was after a lot of thought, and probably after a lot of discussion. Likewise Mr. McClellan took the position he did with a lot of thought and a lot of discussion as well.

In any event, you will see the--

Mr. Chairman: Has everyone found this section we are referring to?

Mr. Cooke: Which page was it?

Mr. Bell: I am at page 716 now.

Mr. Emmink: Mr. Bell, if it would make things easier for the committee, I have copies--

Mr. Bell: We all have them.

Mr. Emmink: --of the legal opinions?

Mr. Bell: I have put them in an awkward spot for the members.

I think the following pretty well summarizes the minister's position and thereby I would assume the board's. He says at the top, in the lefthand column, the first full paragraph, "I think it is unnecessary for me to point out that a committee of the legislative assembly cannot alter the laws expressed in section 42(1) of the act. We cannot, on the report of a committee--"

There is a short interjection where Mr. Smith says, "The Supreme Court says differently," and the minister then says: "My friend, that is not the way of the world. It is not possible on a recommendation contained in a select committee to alter the substantive truth and the reality of the law."

He then goes on at the bottom of the page, just after Mr.

McClellan says he was not giggling, Mr. Elgie says, "If he reviews the history and the effectiveness of this committee, he will see that the number of cases brought before the committee has been reducing every year, and the number of cases coming to this committee has been reduced every year to the point that tonight we are down to one. If that is not accepting responsibility and responding to representation both from the committee and from the select committee, then I do not know what is responsible."

This following is the important reference:

"This Legislature cannot overrule the interpretation of the statute. We cannot operate on the basis of what we think something else should be, because we are now in the midst of reviewing recommendations to reform the Workmen's Compensation Act. The speech from the throne clearly indicated the government's intention to proceed on those."

Now, what I believe Dr. Elgie has said is, "Here are two opinions on the interpretation of that section"--which, by the way, confirm the interpretation placed by the board in responding to the Ombudsman and to the committee. The Legislature cannot overrule that interpretation.

I may get my knuckles rapped for this, but if that's what the minister intended to say and did say, I respectfully have to disagree with him, because implicit in that statement would be that an opinion of an independent lawyer in a downtown Bay Street office governs the process of the Legislative Assembly. I don't think anybody has ever confirmed that by statute or by convention.

If what Dr. Elgie says is, "The act speaks very clearly, and the Legislative Assembly cannot on its own motion override that legal responsibility," then I have to agree with him. So we may be getting into a question of semantics.

You'll see that those who spoke in opposition to Dr. Elgie on the point--Mr. McClellan in particular--said, "You can't have yourself governed by a legal opinion independently obtained, just as this committee can't govern itself by a legal opinion."

In any event the Legislature, for all of the reasons found in Hansard, declined to adopt and approve this recommendation. In effect, the committee of the whole House, from which this debate comes, extracted recommendation six from its report when it reported to the House. It adopted the other five and left this out.

Now, the Ombudsman in his eighth report, and in particular recommendation number 25, which you have already turned to, references 135 complaints on this identical issue. The circumstances of the individual injuries, the circumstances of the individual dealings between the complainant and the board, are really academic. What is important is that in all of the cases the Ombudsman has concluded that the consequence of the impairment of this person's earning capacity, for all of the reasons surrounding that person, are greater than what would be assessed on a clinical rating and that there--



Mr. Goodman: To be fair, Mr. Bell, that has not yet been considered by the board.

Mr. Bell: No. I'm speaking from your standpoint.

Mr. Goodman: Yes, but so am I. The issue is that the board has not yet considered what the impairment of earning capacity is of these 135 individuals.

Mr. Bell: Never?

Mr. Goodman: That's right.

Mr. Bell: All right. Let me back up, then. These 135 complaints will only be-- Oh, wait a minute now. I can't even say that. Can we say that these 135 complaints will be resolved to the Ombudsman's satisfaction only if the Workmen's Compensation Board interprets and applies 42(1) in the way that you have been propounding and in the way that the committee has recommended?

Mr. Goodman: Yes.

Mr. Bell: All right. Can you say today with accuracy that if the Workmen's Compensation Board interprets and applies 42(1) in the way that it says must be done--clinical assessment only--that these complaints will not be resolved satisfactorily?

Mr. Goodman: No. We can't say that, because the board has made no determination, no inquiry yet as to the impairment to earning capacity of the individuals, precisely because of the board's interpretation of section 41.

Mr. Bell: Okay. I'm going to shift gears. We're not going to deal with this. We're going to deal with recommendation number six completely before we get into these new ones. But in any event the issue is the same.

11:40 a.m.

Mr. O'Brien: I think we're in a semantic argument here, aren't we really, though?

Mr. Goodman: No. I don't think so, to be fair. The Ombudsman is simply saying that, because the board has interpreted section 42(1) in the manner that it has in considering these 135 cases, it has made no inquiry into the impairment to earning capacity beyond the clinical assessment.

Mr. Bell: All right. Let's zero in on it this way: The second page in this compendium of material that I have included in C(h)(ii) is an extract from the Ombudsman's eighth report. You will see at the top that it is page 69 of that report, if you will turn over to page 69. This is going to be confusing, because it's bringing in another issue which I do not want to bog down with right now. Just let me take you forward, members of the committee.

The Ombudsman, with knowledge that the Legislature effectively rejected his recommendation, had 135 other cases just like it.

Mr. Goodman: No, that's not so. Your chronology is not correct, Mr. Bell.

Mr. O'Brien: The recommendation on 135 cases was made prior to the consideration by the Legislature of recommendation number six.

Mr. Bell: You're right. I am sorry.

With knowledge of the committee's recommendation that the Ombudsman's interpretation of 42(1) be accepted and implemented, the Ombudsman took 135 complaints with the identical issue and made those 135 complaints part of his eighth report in a way that I'm trying to understand right now.

In any event, at the bottom of page 69 he said this: "In light of the committee's support of the Ombudsman's interpretation and recommendation, a review of all files in this office pertaining to the Workmen's Compensation Board was conducted. Of these there were 135 files under investigation which specifically raised the issue of the board's assessment of permanent disability awards.

"The investigation into these complaints revealed that the permanent disability awards were assessed by the board on the basis that it had no discretion to make any award pursuant to 42(1) beyond a clinical assessment made by a duly qualified practitioner. The Ombudsman decided that, inasmuch as the crucial issue in all of these complaints was the same, the most appropriate approach was to deal with them collectively. The complaints were separated into two appendices"--et cetera.

It then touches upon the communication between himself and Mr. Warrington. In the second last paragraph he references that, after lumping all of these 135 together, the Ombudsman recommended that "pursuant to section 22(iii)(g) of the act the appeal board reconsider all of the cases and obtain all information necessary to assess the workers' impairment of earning capacity."

He also recommended pursuant to 22(iii)(d) that the board alter its practice to take into consideration factors indicative of the actual impairment.

You will see that no real subsequent response was made, because obviously in the intervening period we had the report debated in the House and the legal opinions received and tabled, and the minister taking the official position in the House that the board and the minister would not accept or support the recommendation. So, effectively, how you decide what to do on this issue will affect not only the sixth recommendation complainant but the 135 as well.

It seems to me, members of the committee, getting back to recommendation number six and the action of the Legislature in not supporting your recommendation, that you have simply got to decide what, if anything, you wish to do and/or say in respect of that. You have never been confronted with the situation before. You have been confronted with a situation where the Legislature, for



whatever reason, did not consider your report, but it wasn't because of any question of disagreement; it was a question of not having due regard for the process that your terms of reference represent. That has been long since remedied, and the practice is now well established by the Legislature that your reports are debated specifically and that governmental organizations do respond very quickly after those recommendations are adopted.

I don't have any experience personally as to what committees have done when a recommendation it has made in a report has not been accepted by the Legislature. I think, though, that that can be taken as the norm rather than the exception in select committees. This is not a usual select committee, however; by virtue of the Ombudsman Act, your terms of reference and the now-established procedure of the House your reports are given much more consideration and attention than the usual select committee reports are.

I'm not going to be much help to you. If you want a recommendation from me as to what should be done I think you should probably take steps to have the record a little more complete as to the background of the request of the legal opinions and, having regard to the directive that is now in force--August 5, 1980--against your comments in the eighth report, to see what, if anything, further can be done.

Mr. Goodman: There is one further piece of information that I think might be of assistance to the committee in its deliberations. As I understand it the Ombudsman received the two legal opinions read into the Hansard record when the select committee's eighth report was debated, just a few days before the debate took place. He had already proceeded to the Premier (Mr. Davis), pursuant to section 22(4) of the Ombudsman--

Mr. Bell: You are speaking now of complaint 25 in the eighth report?

Mr. Goodman: Yes. On the other hand, the matter was included as a detailed summary following the Ombudsman's consideration of the two legal opinions referenced. The Ombudsman is of the view that there is nothing in the two legal opinions referenced to cause him to change his view that the Workmen's Compensation Board has placed an unreasonable interpretation upon 42(1).

If members of the committee wish to turn to the two legal opinions I can very briefly explain the Ombudsman's position. They are contained at page 704 and following in the Hansard--

Mr. Bell: Mr. Goodman, can I just plug in some more things before we get to that opinion?

Mr. Goodman: Certainly.

Mr. Bell: The committee will want to hear what the Ombudsman has to say in respect of the Legislature's decision not to support the recommendation, and I think it is specifically interested in knowing to what extent he agrees with the opinions.

Mr. O'Brien and Mr. Emmink, before we start, I take it when the committee's report was tabled and recommendation six was considered by you and others of the board, you had some serious concerns for reasons that we have discussed previously and which may be set forth in the legal opinions. You read section 42(1) very clearly as only permitting a disability assessment based on a clinical rating, is that correct?

11:50 a.m.

Mr. Emmink: Correct.

Mr. Bell: It's not an unusual practice. It has been done on a number of occasions. You seek outside legal opinions. That is not to cast any aspersions on your legal staff, but it's done more to see whether private practitioners concur in the opinions expressed by that legal staff, is that correct?

Mr. Emmink: Correct.

Mr. Bell: No lawyer would ever feel slighted by obtaining a second opinion from John Robinette or Alan Leal.

Can you assist us? When the request was made of both the gentlemen for their legal opinions, were they given by way of background or assistance the three directives that the committee had considered and the transcript of the committee's proceedings last July when this case was considered?

Mr. O'Brien: I would have to verify that, Mr. Bell. I am sure they were given the proceedings of the committee. I would not be sure they were given the directives, but I will check that out.

Mr. Bell: Are you able to do that now? Can Mr. Warrington assist?

Mr. O'Brien: No, I don't think he can. I could find out.

Mr. Bell: Find out over lunch perhaps.

Mr. Emmink: I will find out over lunch, but keep in mind, Mr. Bell, that the board only retained one of the lawyers. The other one was retained by the Minister of Labour and we really don't know what the Minister of Labour supplied.

Mr. Bell: Are you speaking of Alan Leal's opinion?

Mr. Emmink: That's right.

Mr. O'Brien: That was not an opinion requested--

Mr. Bell: Only to the extent that you had knowledge of--

Mr. Emmink: Certainly we could try and find out what Mr. Robinette was supplied with.

Mr. Bell: I am particularly interested in knowing whether the request for the legal opinion was to examine section



42(1) and tell us what it means or here is what we have done in the past against the current discussion with the select committee. Is there anything in our past practices which is beyond the jurisdiction of the board?

Mr. O'Brien: I think probably it may be best to have the solicitor of the board here who requested the legal opinion. Just to make it very clear, the board has consistently applied section 42(1) as a clinical basis. The directives create some confusion in this regard. None the less this board and all other boards in Canada have historically awarded pensions on a clinical basis, so that when we requested a legal opinion, we were expecting one to be supportive of our position, as indeed it was.

Mr. Bell: Well, Mr. O'Brien, neither you nor I want to rehash what we said last summer, but the two directives considered by the committee with you, which were enforced prior to the August 5, 1980 one, did set out considerations that your staff could take into account beyond merely a clinical rating, didn't they?

Mr. O'Brien: Mr. Bell, if we are going to discuss the directives, we have the specialists here to deal with them and I would like you to deal with them and not with me.

Mr. Bell: Okay. Can we bring them forward and you could introduce them? Please be assured, I do not intend to rehash this.

Mr. Emmink: Mr. Bell, we have Mr. Doug Cain, the divisional co-ordinator of claims services, and Mr. Arthur Darnbrough, the director of claims adjudication.

Mr. Bell: I'm sorry, the second name?

Mr. Emmink: Mr. Art Darnbrough.

Mr. Bell: Yes. We have had the pleasure before, I think, something about overpayments.

Mr. Darnbrough: Yes, indeed.

Mr. Bell: Okay, I am going to try and deal with this in a practical way. When you are confronted with a decision of your Legislature, and you are an agent of the Legislature, I do not believe this committee is in the business of second-guessing that debate, quite frankly.

I would urge this committee to deal with the fact of that decision against the background of any additional information that has come to your attention since; such as these 135 cases and such as whether or not the two lawyers had the benefit of all of the directives and the committee's proceedings when they issued the opinion and find out whether anything can be further done in respect of the matters that are now before you; which might include, by the way, the person referenced in your sixth report.

Directive 1 deals with 42(1), August 5, 1980. The clerk might assist members of the committee. It is a schedule E to your eighth report. If there are copies of your eighth report available, it is page 72 of the committee's eighth report.

What I am going to do is reference what the committee had to say about that directive, look at the directive, look at 42(1) and legal opinions that have been presented.

I have already read it into the record, so I won't repeat it. The committee made certain comments at page 54 of the report, as to that directive. You gentlemen can confirm that this directive was passed by the corporate board after the select committee's proceedings last July. Is that correct?

Mr. Cain: This particular directive which you have dated August 5, 1980, went into the board policies and procedures manual on that date but the order was passed in February, 1980. There was simply a delay in preparing it to put into the directives.

Mr. Bell: All right, this directive obviously was intended to replace the previous one to which we have already made reference. Did the preparation of this directive have anything to do with the investigations undertaken at the time by the Ombudsman?

Mr. Cain: Not that I am aware of and I was a member of the committee that changed it.

Mr. Bell: Did it have anything to do with the proceedings or the then forthcoming proceedings of this select committee, which would be considering section 42(1)?

Mr. O'Brien: At that level that we were dealing with it as the Ombudsman administration, there was no knowledge of what was going on.

Mr. Bell: So it is a document generated solely internally for your own reasons.

Mr. Cain: That is correct.

Mr. Bell: Was one of the reasons a recognition that the previous directives then in force were ambiguous or somehow needed to be restated in terms of 42(1)?

12 noon

Mr. Cain: Ambiguous to the degree that perhaps people outside the board could misconstrue them. I think in our paper we began by mentioning that these directives date back many years and were written in a manner which was understood by the staff and that was the purpose, but with the advent of general publication, we came to realize quite quickly that people were misunderstanding what was written.

Directives 10 and 11, which you refer to, we have always considered, and when they were put in there we considered that they were part of section 42(5), but they were part of a procedure and we were guiding our people, to say when you deal with 42(1), you must also look at the person you are examining for a clinical disability in terms of are they entitled to a supplement. Other sections of 42 have to be looked at in the same light. You must always look at the person with all the sections.



Mr. Bell: All right. I want you to hold that thought because I want to come back to it. I do not want to rehash what confirmations were made by board representatives last summer that 42(1) was interpreted historically on a wider scale than just looking at the clinical assessment. That is water under the bridge.

Going through this directive--and to get the procedural matters out of the way--but if you look to page three of the directive, which is found at page 74 of your report, it speaks to changes in the clinical rating. There are three circumstances that are set out whereby the initial clinical rating may be changed.

Could either of you gentlemen advise if it is possible, under any one of these sections, for a change to be based upon circumstances other than a medical/clinical assessment?

Mr. Darnbrough: In order to view this particular section, again it is necessary to understand the entire picture of permanent disability ratings.

Mr. Bell: All right. Why do we not sit back and let you give us an explanation?

Mr. Darnbrough: In every instance that a permanent disability is assessed by the board, we take into account that which the provision of section 42(1) allows from a clinical assessment. We also take into account the provision of section 42(5), which is based, as you now know from your discussion, essentially on earnings capacity, separate from clinical assessment.

The specific reference that you have made on page 74 to changes in clinical rating is the guideline for the adjudication people to deal with the reassessment of the clinical disability essentially. But in carrying out this process, subsequent permanent disability medical examination being the main issue, the adjudication staff, as well as the pensions medical advisory staff, would be addressing not only the clinical disability under section 42(1), but would, in fact, take a look at the possibilities of entitlement under section 42(5).

Mr. Bell: All right. Now just stopping there, am I correct that notwithstanding what this directive says at the top, 42(1), what it really speaks to--because it is an internal document to your people who have to work with that every day--is the entire assessment process that your staff must undertake when dealing with a person in this situation?

Mr. Cain: That is correct. As a matter of fact, if you look on the previous page, under responsibility of pensions adjudicators, we mention that they must look at section 42(5).

Mr. Bell: You are specifically referring to page--

Mr. Cain: Seventy-three.

Mr. Bell: --73 of the committee's report.

Mr. Darnbrough: I am sorry, of our submission.

Mr. Cain: It is the August 5, 1980--

Mr. Bell: "Pension adjudicators shall be responsible for the application of the provisions of 42(5), temporary supplementary awards in keeping with the board's guidelines."

Mr. Cain: That is right.

Mr. Bell: In other words, you are saying when you guys do a 42(1) assessment, you also consider 42(5), whether that person may be entitled to something there.

Mr. Darnbrough: That is correct. They are automatically done together.

Mr. Bell: All right. The only problem with that is--problem without any--not in the perjorative sense, is that 42(5) only permits a benefit on a temporary basis. The Ombudsman was speaking from a permanent matter.

We agreed last time with Mr. O'Brien and others that legislation, as presently drafted, does not give you an ability to turn 42(5) into a permanent award. Is that correct?

Mr. Darnbrough: That is correct.

Mr. Bell: All right. Can you confirm for the committee that the board's practical treatment of 42(5) awards are not permanent, but are indefinite?

Mr. Darnbrough: That is correct.

Mr. Bell: For all practical purposes, that may be a distinction without a difference?

Mr. Darnbrough: If I understand what you said correctly, yes.

Mr. Bell: What do you think I said?

Mr. Darnbrough: I think you said that we can make these indefinite or, if I can put it in quotes, "permanent;" that is, the supplementary awards. If that is what your intention is, that is correct.

Mr. Bell: Do you know where I am going in this? Where I am really going is, why are we worrying about whose legal opinion is the best one? Why are we worrying about whether or not the board has applied 42(1) in a way which may be inconsistent with an interpretation of 42(1)? Is there a way that the Workmen's Compensation Board can consider all of the circumstances of these complainants' situations with a view to deciding whether they are entitled to something more than that which the clinical assessment dictates?

Mr. Cain: Certainly, hopefully, when the clinical



assessments were done in each of those cases, 42(5) was considered and just in a theoretical sense because I do not know those claims but, for example, 42(5) indicates that the person must be available to rehabilitation treatment.

Mr. Bell: That is another problem.

Mr. Cain: They are significant words in this subsection.

Mr. Bell: We then have a problem, as we are going to find out when we get to the next recommendation, as to what that means and it is particularly acute when people are of senior years, approaching or beyond retirement age but nevertheless working.

Mr. Goodman: The representative from the board has quite properly stated that the considerations for the granting of an award pursuant to a supplementary award under 42(5) are different than those set out in 42(1).

Mr. Bell: Mr. O'Brien and Mr. Emmink may want to come forward.

The circumstances of the complainant referenced by recommendation six, the last report: Did the board at any time consider whether a 42(5) additional benefit could be conferred on that person?

Mr. O'Brien: In every consideration of a permanent disability award under section 42, section 42(5) is considered.

Mr. Bell: The answer to that was no, because of the person's years--

Mr. O'Brien: Because he is unemployable.

Mr. Bell: Unemployable--so we still have a gap in the legislation. Where somebody is, for example, of senior years, but working and injured while working and, because of those senior years or maybe even because of the injury itself, to all intents and purposes is unemployable, the board feels it lacks the ability to confer a benefit on that person additional to the clinical assessment.

Mr. O'Brien: I think, as I said when we met once before, the board does consider people over 60 years of age and under particular circumstances will award a special supplement from time to time. I do not think there is any statutory support for it, but the board has consistently done it.

Mr. Bell: Can we just go on further to finish this review of the directive of August 5, 1980. At page 75, clause 5.4 speaks to "increases in the quantum of award following request for review." What circumstances must present themselves before the board would consider increasing the quantum?

Mr. Cain: There would have to be an increased disability.

Mr. Bell: So the clinical assessment has to change; I see.

Last, page 76, clause seven, cases not meeting general criteria, and this is the clause the committee paid particular attention to which reads, "Permanent disability cases which do not meet the general criteria should be individually judged and dealt with equitably and fairly having regard to all circumstances." Would either of you tell the committee what that means?

12:10 p.m.

Mr. Cain: We put this particular phrase in a number of our policies. It is there so we have room to manoeuvre, so we are not held tightly.

For example, in this case, under 42(1) we have certain subheadings where we talk about within one year from the date of assessment we will do certain things, or that when we have finger amputations, we will often rate by form. What we are saying, basically, with that sentence is we may not do those things quite that way if there is a more appropriate way in a particular case to do it.

Mr. Bell: Can we take a specific example--and I am married to the Glenn Gould, right hand injury--does clause seven permit the board to award Glenn Gould an amount of benefit in addition to that which would flow from a pure clinical assessment?

Mr. Cain: No, it would not. The clinical assessment that Glenn Gould would receive is a constant.

As you said, if you, Mr. Bell, had the same injury, except for your earnings prior to the accident on which the award is based, you would both get the same clinical award. This particular phrase in here, I suggest, really deals more with procedure than anything else, the means by which we arrive at the clinical rating. But it would not give us any room to give him more. We can only do that under section 42(5) and its supplement.

Mr. Bell: I am having difficulty understanding that because, when we read it, it says, "Permanent disability cases"--that is 42(1).

Mr. Cain: Yes.

Mr. Bell: All right; no doubt about it. That is not 42(5)--"which do not meet the general criteria." I take that to mean the general criteria that flow from the board's interpretation of 42(1), being benefits determined by clinical assessment. Am I correct?

Mr. Cain: Having been a member of the committee and recalling it very well, as I said, primarily the statement is put in a number of policies we produce to give us room to manoeuvre for the future when you do not know what the future holds for you.

Mr. Bell: I am always an advocate of that. Lawyers are great draftsmen.



Mr. Cain: Therefore I want to emphasize it does not really give us room to increase a clinical award. Having said that, maybe someone could come up with a case where there was an increased physical disability. Remember please, the clinical award must be based on physical disability. There are no other items taken into account.

Mr. Darnbrough: One of the points Mr. Cain has mentioned deals with the time frames and the procedure the board is to follow within those time frames, as is laid out by the general guideline. There may well be an exceptional case which might follow the pattern of what has been described in the order generally, but may have some particular aspect to it which would allow the board, because of the statement at the end of this paper, to do something other than wait for a particular time frame.

Mr. Bell: Can I tell you what it says to me, an outsider? Bear in mind now--and I think your point was well taken that those old directives were internal and, while they might not have made sense to Bell, they sure made sense to Joe Brown who dealt with them every day. This directive, however, is a new animal. Its background was public in the general sense, public in the Ombudsman sense, and public in the select committee of the Legislature sense. Can I just finish this thought?

There is no doubt--and you have already confirmed it--the drafting was not directed solely to your internal staff.

Mr. Cain: True.

Mr. Bell: It tells me that the board has given itself a discretion, given the appropriate circumstances, that a person can be approved for a permanent disability award in an amount not confined to a clinical assessment. Now, am I wrong?

Mr. Cain: I see your point.

Mr. Bell: If I am--

Mr. Cain: Yes.

Mr. Bell: All right. Will you tell us then--

Mr. Cain: Your understanding is wrong, but I just want to make the comment that your deliberations of the committee through the last while have certainly pointed out to us at the board how we are going to have to be more careful in being clear and precise in what these directives--when we write a directive and not look so much internally as we have in the past, because of course we want our own people to know how to do things. We have to make certain that people outside the board understand what we are doing and why we are doing it.

Mr. Bell: Will you explain in more detail to us after lunch why I am wrong then, and we will hold that for--

Mr. Cain: In reference to this last point?

Mr. Bell: Yes. I think one of you had a commitment after lunch, but maybe you can shuffle it. I think we can deal with this within the first half hour after two o'clock. Mr. Goodman, we will hear from you, I promise.

Mr. Goodman: I will certainly try to keep within your time frame, Mr. Bell.

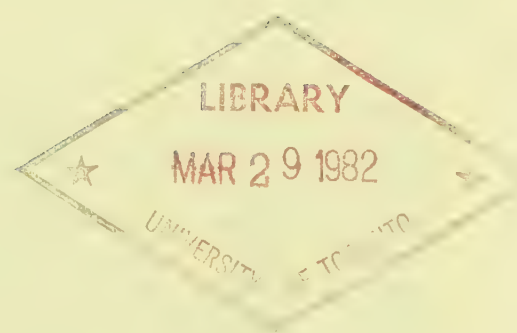
Mr. Chairman: Let us break for lunch now and then we will be back at two o'clock.

The committee recessed at 12:18 p.m.





SELECT COMMITTEE ON THE OMBUDSMAN  
OMBUDSMAN'S EIGHTH REPORT  
TUESDAY, SEPTEMBER 15, 1981  
Afternoon sitting





SELECT COMMITTEE ON THE OMBUDSMAN

CHAIRMAN: Runciman, R. W. (Leeds PC)  
Andrewes, P. W. (Lincoln PC)  
Barlow, W. W. (Cambridge PC)  
Boudria, D. (Prescott-Russell L)  
Cooke, D. S. (Windsor-Riverside NDP)  
Dean, G. H. (Wentworth PC)  
Eves, E. L. (Parry Sound PC)  
Kells, M. C. (Humber PC)  
Miller, G. I. (Halldimand-Norfolk L)  
Philip, E. T. (Etobicoke NDP)  
Shymko, Y. R. (High Park-Swansea PC)  
Van Horne, R. G. (London North L)

Clerk: White, G.

Counsel: Bell, J.

From the Office of the Ombudsman:

Catton, N., Assistant Director of Special Services  
Goodman, B., Counsel and Special Adviser to the Ombudsman

From the Workmen's Compensation Board:

Cain, D., Acting Director, Claims Services Division  
Darnbrough, A. J., Director, Claims Adjudication Branch  
Emmink, A., Assistant Ombudsman Administrator  
Farquharson, D. F., Registrar of Appeals  
O'Brien, L. F., Ombudsman Administrator  
Warrington, A., Vice-Chairman

LEGISLATURE OF ONTARIO  
SELECT COMMITTEE ON THE OMBUDSMAN

Tuesday, September 15, 1981

The committee resumed at 2:08 p.m. in committee room No. 1.

OMBUDSMAN'S EIGHTH REPORT  
(continued)

Mr. Chairman: Come to order, please. I should mention at the request of Mr. Philip, he wanted to have it put on the record that he regrets his inability to be here today due to prior commitments in the riding, so I am acceding to his request in having that noted.

We will carry on where we left off at the break prior to lunch and I will turn it over to John Bell.

Mr. Bell: Thank you, Mr. Chairman. I think it would be useful if we sort of sat back for a minute and assessed where we are.

You have two items on your plate right now. You have the matter of the sixth recommendation in your eighth report not approved by the House, and you have the matter of the complaint summary number 25 in the Ombudsman's eighth report which deals with the identical issue. I am endeavouring to deal with them both together so that we do not duplicate, for obvious reasons. We have the two experts here before us in respect to 42, at least from an internal adjudicative basis, and I am trying to extract as much information from these gentlemen as I can.

What you do with recommendation number six, it seems to me, is fairly straightforward and obvious. You are all big people and Legislatures have rejected recommendations before and everybody goes on to other things. What has happened however, as you are now aware of the timing of this situation, Mr. Morand, before the report was debated, concluded his efforts with these 135 other cases and sent them to the board and said, "Deal with them in the same way," expecting that the Legislature would approve your recommendation. Now that the reverse has happened we have to wrestle with the question of what to do with these 135. That is paramount in my mind right now, rather than recommendation six.

That assists everybody in the room as to where I am going. I am inquiring of these gentlemen and with anybody else who can assist whether there is a practical way in which these matters can be dealt with, or whether it is simply a conclusion that we are sticking to our interpretation of 42(1) and that is the only way they can be dealt with.

This morning we left off with my statement that clause seven of the current directive is capable of an interpretation that the board is not confined to an award of a permanent disability based on a clinical assessment. You disagreed with my conclusions and you were about to elaborate as to why I am wrong.



Mr. Cain: The intention is not to put that clause in to allow the board to alter clinical awards through that sentence. This order 32(1) of the board that you have is basically a board order outlining the responsibilities and procedures of the individuals at the Workmen's Compensation Board who are doing pension ratings. That is the purpose of this order. I believe you have a couple of examples of that.

Mr. Darnbrough: I think this morning we suggested perhaps an example would help clarify it. I hope this does just that. Not mentioned in this particular responsibility and administration guideline is the situation or an injured employee about to be rated for permanent disability who dies before that rating takes place.

Item seven of this guideline gives the generalization of procedure necessary for an adjudicator to deal with that type of case. In the case of an injured employee who dies before the rating takes place, other procedures are necessary. The claims adjudication branch and the medical branch would have to assemble information about the condition that existed and make an estimate as to the level of disability and make an award payable to the estate. That is the type of situation that takes place in these cases, but as you can see, that procedure, that assignment of responsibilities is not specifically delineated by these guidelines.

Mr. Bell: Let us take another example. How much for the loss of a right baby finger? That is found in the rating schedule, is it not? I take it the general practice is all one has to do within the board is identify the loss of an index finger and apply the percentage that is in the rating schedule.

Mr. Cain: That is correct.

Mr. Darnbrough: Excuse me. There would be one point of clarification on that. The level of amputation is definitely a consideration.

Mr. Bell: How much is lost, right.

Mr. Darnbrough: There may be factors as to the level or the amount of movement lost at the next joint. Things like that could influence or increase the award.

Mr. Bell: Assuming generalities for level of amputation, does clause seven permit the board to grant a greater permanent disability benefit, if all of the circumstances are there, than is otherwise found in that rating schedule?

Mr. Darnbrough: I think in itself, that section does not do it. As far as that section relates to this particular guideline, item four describes under what conditions and what procedures that rating might be changed.

In other words, this paper would provide for the authority and assign responsibility for adjudication people to conduct a

subsequent medical examination and review the level of disability, and reassess the clinical disability. I do not how to underscore this any more than what I have said, but article seven pertains to this paper, to this guideline.

Mr. Bell: Okay. All right. Is there anything in this directive that permits the board to award somebody a permanent disability benefit greater than the percentages that are stipulated in the assessment rating schedule?

Mr. Darnbrough: Page 73 refers to the responsibility of the pensions adjudicator with regard to section 42(5), and in that case an amount of money greater than that which would be awarded strictly for the clinical disability is payable and the responsibility for ensuring that it takes place has been assigned to the claims adjudication people.

Mr. Bell: I do not see 42(5) referred to in item two.

Mr. Darnbrough: I am looking at page 73.

Mr. Bell: Yes.

Mr. Darnbrough: I am sorry. If I referred to item two, it is not item two; it is the second of the two headings on page 73, entitled Responsibility of Pensions Adjudicator.

Mr. Bell: All right. Excluding that, is there anything in the directive speaking only to section 42(1) that permits the board to award a permanent disability benefit greater than that found in the assessment rating schedule?

Mr. Darnbrough: There is not, in my opinion.

Mr. Bell: All right. If there are circumstances present to warrant a greater percentage, they must be found through the exercise of 42(5). Is that correct?

Mr. Darnbrough: They must be found through the exercise of 42(5) or a review and a reconsideration on a clinical basis.

Mr. Bell: Yes. Do you know what the Ombudsman has said? He has looked at 42(1) and he has said, "You consider all of the circumstances." You understand that?

Mr. Darnbrough: Yes.

Mr. Bell: You have said, "No, 42(1) we have to tie the clinical assessment with the disability award." Is it fair to say that the Workmen's Compensation Board, when it assesses benefits under all of section 42, considers all of the circumstances?

Mr. Darnbrough: In absolutely every case that comes before the board for a permanent disability rating, the entire section 42 provision is examined.

Mr. Bell: Okay. Whereas the Ombudsman has--I am not intending anything pejorative about this--taken a narrow view of



all of the circumstances in 42(1), the board has taken a broader view and said, "If, as and when we look at all of the circumstances, we take all of section 42."

Mr. Darnbrough: That is absolutely correct.

Mr. Bell: Okay. Now--

Mr. Goodman: But that misstates the Ombudsman's position. With respect, the Ombudsman's position--

Mr. Bell: I did not want anybody to become annoyed about my use of the word "narrow."

Mr. Goodman: Except, Mr. Bell, I do not want you to attribute to the Ombudsman an opinion which he does not hold. So to ask Mr. Cain as to whether the Ombudsman holds a broad or a narrow interpretation, I do not think is appropriate.

Mr. Bell: No. I knew that word was going to get people exercised. The Ombudsman says that in 42(1) assessment you take all the circumstances. All right?

Mr. Goodman: That is a broader interpretation on 42(1)--

Mr. Bell: I do not want to get hung up with semantics.

Mr. Goodman: I do not either, but on the other hand I am not going to sit idly by, Mr. Bell, and hear an opinion being attributed to the Ombudsman which he does not hold. In fact, you will see in the next detailed summary that the Ombudsman holds a broader interpretation of 42(5) than the board admits.

Mr. Bell: All right. My choice of words was perhaps unfortunate, but in any event, I think the intent and the thrust of my question is there.

Mr. Darnbrough: I trust you will appreciate that my comments were not intended as a reflection on the position of the Ombudsman.

Mr. Bell: I am not reflecting on him either.

Mr. Darnbrough: They are a reflection on the board's position of examining each case in the totality of section 42.

2:20 p.m.

Mr. Bell: I find it curious that Mr. Goodman just made his remarks, because I share the Ombudsman's view of 42(1), so I guess I am narrow too, using my own words.

Mr. Darnborough: No, Mr. Bell, you are misunderstanding me. My concern was with your position on the Ombudsman's interpretation of 42(5), not 42(1). You suggested that the board holds a broader interpretation than the Ombudsman does with respect to 42(5), and that is not correct.

As I have indicated, we shall hear a little later on what the Ombudsman's interpretation is of 42(5), and that is broader than the board's is.

Mr. Bell: All right. Would you gentlemen agree with me that the board has historically given the type of relief that the Ombudsman has recommended in the recommendation six case--and in fact these 135, if we presume the details of them; has granted the type of relief requested, but by exercise of all of section 42 as opposed only to section 42(1)? In doing so, the board requires that the conditions set out in 42(5) be adhered to. Right? Am I with you so far?

Mr. Darnborough: Yes, that is correct.

Mr. Bell: Or are you with me so far? All right.

Now, if I can just shift gears for a minute. Ms. Catton and Mr. Goodman, assume for the moment that the Workmen's Compensation Board accepted as reasonable your interpretation of 42(1). Would you consider it a reasonable position for the board to take that, in exercising its discretion under that section, it should have regard to the conditions that are set out in 42(5) as equally applicable in 42(1)?

Mr. Goodman: Except for the fact that--and the board has stated and the committee has recognized this, and in fact this criterion formed one of the bases, and in my view the appropriate bases, of the select committee's recommendation--42(5) appears to speak of a temporary supplementary award as opposed to a permanent one.

Mr. Bell: I appreciate that. But we have had some enlightening discussion this morning about what 42(5) actually does, so I think we should keep that in the back of our minds when we examine 42(5).

Section 42(5) is temporary; the legislation says it is temporary and all of the board's internal documents say it is temporary; but we spoke in terms of indefinite, and a practical solution to an anomaly in the legislation this morning.

I know what you are saying. All I want to know is if your office believes it is reasonable that the board exercised a wider discretion in 42(1) if they have regard to the conditions precedent set out in 42(5).

Mr. Goodman: In fact, Mr. Bell, where the board has failed to determine whether or not a supplement ought to be awarded under 42(5), we have recommended to the board that they make such a determination. So, yes, if you are asking whether the Ombudsman supports the board in considering whether or not a permanent disability award ought to be made, all the subsections of 42, yes, we certainly do.

Mr. Bell: Okay, all right. So that, getting back to the circumstances of recommendation six--and I am only using this for an example, I am not rehashing--if the board had accepted that



recommendation, but nevertheless in the exercise of its discretion had said, "Now we want to make sure that the conditions that 42(5) speaks to, about being available for or co-operating with, apply, before we grant additional entitlement..." Is everybody with me?

Mr. Goodman: Yes, I am with you. We have no problem there. You have a problem with where you are leading to, that is all, in terms of the Ombudsman.

Mr. Bell: Let us see about that for a moment.

Mr. Goodman: If you are asking me, Mr. Bell, whether that would have been a satisfactory answer to the Ombudsman's report, the answer is no.

Mr. Bell: No, do not anticipate where I am going. What is emerging for me is that we have been trying to fit a square peg into a round hole and I think both parties are working towards the same end but they are doing it at different ends of the section, if you will.

I want anybody who is here on behalf of the board to comment on this. It seems to me that the board has historically done the very thing that the Ombudsman has asked it to do, the only difference being the board takes the whole section when it does it. We all understand that something says "a temporary benefit" but what the board does in practical terms, a temporary benefit becomes an indefinite benefit under section 42(5), and for a lot of practical purposes, I am sure with a lot of experiences in this province, that has been a "permanent" disability pension.

Is there anything that you take issue with in that statement?

Mr. Darnbrough: I do not take issue with what you said but I would not want to mislead you because of the difference in definition of the word "permanent."

Certainly I cannot take issue with you, because these awards made under section 42(5) are conditional awards. While we consider them temporary, we do review them on a regular basis and there is no specific time frame as to the termination of those awards. They are dependent on the individual circumstances and, yes, I suspect that they could very well become permanent, if permanent means as long as that person lives.

Mr. Bell: Mr. O'Brien?

Mr. O'Brien: Always understanding, Mr. Bell, that there are specific requirements that must be met under 42(5).

Mr. Bell: I would like to leave those aside for the moment because we are going to be dealing with those when we get to the other recommendation denied and I think we can deal with it all at once there.

Mr. O'Brien: But it is important to make the distinction in terms of the permanency.

Mr. Bell: Excuse me, I just want to make sure that I do not lead people into a dead alley.

Mr. O'Brien: Perhaps it might clarify things if we were to say this: Under 42(1), when the clinical finding is made there is no discretion in the board not to grant. Under 42(5), it is a discretionary section where certain specific requirements have to be met before there is a supplement grant, a supplement grant for temporary terms that may last for a very significant time and may, in fact, be permanent, but is never awarded on a permanent basis.

Mr. Bell: I am more interested in if the board has effectively done exactly what the Ombudsman has asked it to do in other cases by interpretation and application of the entire section.

Mr. Darnbrough: I wonder, perhaps for my clarification and for the clarification of the committee members, is there some question that in the 135 cases referred to, the board has in fact not considered these individually having regard to all provisions of section 42?

Mr. Bell: I do not think anybody in this room can answer that question today.

Mr. Darnbrough: The Ombudsman has presented it. Perhaps the Ombudsman, for the benefit of us and the committee, could explain.

Mr. Bell: I am sure that is a rhetorical question. I am sure the Ombudsman's representatives at this time cannot assist you in that regard.

Mr. Cooke: Could I intervene? I am not really sure I understand where we are going. As I understand the line of questioning, are you not comparing apples and oranges, two different types of cases altogether?

Mr. Bell: No, I believed I was in an apples and oranges situation this morning before we started. I did not think there was any way that they could be brought together. But what I have heard this morning from the board representatives is that wherever 42(1) is considered for application, 42(5) is concurrently considered. That, in my opinion, puts the scope of 42 on a different plane, that there is no such thing as a simple 42(1) consideration; there is a 42 consideration.

2:30 p.m.

Against that background, the board has recognized, very frankly so, an anomaly in the legislation, that where somebody does have an impairment of earning capacity significantly greater than the usual circumstances--that is, the clinical assessment--they will look to 42(5). That means there is relief available to the Glenn Goulds of this world who have their right hand injured. The anomaly, however, is that the legislation does not permit that additional compensation to be on a permanent basis.



Mr. Cooke: Without strings attached.

Mr. Bell: No. The strings are before you get it. Once the strings are pulled and you are--

Mr. Cooke: What I understand from the Ombudsman's recommendation--

Mr. Bell: I am sorry, you are right. The strings are attached.

Mr. Cooke: Yes.

Mr. Bell: Yes. You have always got to comply.

Mr. Goodman: It also begs the question as to what the word "significantly" means. No one would quarrel that Glenn Gould's impairment or earning capacity is significantly greater. But 42(5) does not cover a person whose impairment or earning capacity is greater but not significantly greater. That is still a lapse.

Mr. Bell: That is another point well taken. All right. But in any event, it is considered in every case.

Mr. Goodman: If it is significantly greater.

Mr. Bell: If it is considered in every case, the potential is there that it would be made available. That is how I read the directive of August 5, 1980. It is simply: "We are not rubber stampers. We do not, in all circumstances, simply apply the percentage that is set out in the assessment rating schedule. Where there are, in the words of clause seven, cases that do not meet general criteria and where we judge cases individually, equitably and fairly, having regard to all of the circumstances, we may award an increased amount under 42(5)."

Mr. Cooke: Am I not correct in understanding that they do apply a percentage? For example, I had an individual in my office yesterday. He has a pension. He has been assessed for a pension. I do not pretend to understand the Workmen's Compensation Act section by section, but he has been receiving further benefits. I assume that would be under other sections of 42.

He is not receiving the additional amount as a percentage, he is receiving that as a supplement in recognition of the fact that he was in a transitional stage. He got that for two years. The decision of the board was, after that two years, he was no closer to getting into the work place than he was at the beginning and therefore they cut him off.

If we are going in the direction of looking at that, that, in my opinion, provides no stability and no long-term guarantees for the individual in recognizing that there are these other provisions that can be pulled away from the claimant at any particular time.

Mr. O'Brien: That may very well be right, but it is

important to understand, Mr. Bell, that the clinical rating of, let us say, 20 per cent is awarded under section 42(1). If there is a supplement under section 42(5), it is awarded in addition. This clinical assessment is not changed.

Mr. Bell: I know.

Mr. Cooke: That is the point I was making.

Mr. Bell: We understand that. Okay.

If the committee or the Ombudsman's office were to ask the board, in respect of the 135 cases, to re-examine them against the background of what we have discussed today and the statements that we examine all of 42 and not just 42(1), would the board be prepared to accept that suggestion?

Mr. Darnbrough: I have absolutely--

Mr. Bell: I think you should have assistance from Mr. O'Brien or Mr. Emmink, in fairness to you.

Mr. O'Brien: We have not been faced with that position. At this particular time, we are dealing with the recommendations of the Ombudsman to the select committee, which is the acceptance of the interpretation of section 42(1) in relation to these 135 cases.

Mr. Bell: The Ombudsman has said to you; "I have got support for my interpretation under 42(1). Now, you go and take each of these 135 and reconsider an assessment under 42(1) only."

Mr. Darnbrough: Mr. Bell, I submit that earlier I asked if it would be appropriate to have the Ombudsman's office clarify their position on the 135 cases. It seemed at that time to be a rhetorical question. If it no longer is, and it is clear to us that some review of these cases is required administratively, we are prepared to do that as we would reconsider any case on request.

I have no reason whatever to believe that each of these cases was not reviewed, having regard for the total provision of section 42, as I have explained to the committee.

Mr. Bell: I do not have any doubt either of what you have told us today, but I think you have been asked to reconsider, taking in all circumstances. What those circumstances are will be dictated by the individual cases.

I said the question may be rhetorical. It is my understanding that the Ombudsman's investigation for all of the 135 did not reach the stage whereby any consideration was made or conclusions drawn as to whether and to what extent the board initially--

Mr. O'Brien: Mr. Bell, I want to be sure what you are asking us. Are you asking us if we will reconsider the 135 cases under section 42(1), in terms of the interpretation presented by the Ombudsman?



Mr. Bell: No. I am asking would the board reconsider each of the 135 cases, pursuant to section 42, period--

Mr. O'Brien: (Inaudible)

Mr. Bell:--against the background of everything that you have said today, the explanation given as to the August 1980 directive.

Mr. O'Brien: I think it is a problem of whether or not the Ombudsman would be prepared to so recommend.

Mr. Bell: We will hear from the Ombudsman in a minute. I just wanted--do I take it that the board would be prepared to do that, if requested?

Mr. O'Brien: Yes.

Mr. Cooke: I certainly do not--that would not be answering the question. It would not be deciding the problem. I have not sat on this committee before, but certainly it would not satisfy me as to the basic question that we have been discussing.

You are looking at the 135 cases. I gather that the Ombudsman is looking at using the 135 cases as a question of policy and interpretation. I guess the Legislature came to grips with that. I am not sure how we can readdress that, if there is a way.

Mr. Bell: As I started out this morning, I am looking for a practical conclusion to this against the background of what the Legislature did to recommendation six. I think probably you are right. The Ombudsman was hoping to have some matter of policy determined by the committee's recommendation and he sees that is not to be the case.

Mr. Cooke: As I discussed with you just before lunch, I do not like the process of the Workmen's Compensation Board, the Minister of Labour (Mr. Elgie) or anyone--as was expressed in the debate in the Legislature--of using two lawyers, no matter how qualified or how good their reputations are, to make an interpretation of legislation that has been passed by the Legislature.

I wonder if one of the options we could not consider or should consider is that maybe we would like to recommend to the ministry, would it be through this committee and through the Legislature, that section 42(1) and its interpretation be referred to the courts. I imagine that would be done, and I guess, from talking to Jim Renwick, that it be done through the Constitutional Questions Act--

Mr. Bell: Constitutional Questions Act.

Mr. Cooke: --and that would get an interpretation of the courts as to what that section really means.

Mr. Bell: Mr. Cooke, I was reminded over lunch that not

in the May 14 debate but subsequently a question was asked, I believe by Mr. Renwick, of the Minister of Labour whether that minister would consider such a reference, and the minister answered that he would not. I assume he was speaking on behalf of the government that they would not refer section 42(5) for consideration.

The question might be appropriately put to the Workmen's Compensation Board for a response.

2:40 p.m.

In any event, you have got a further practical problem, and I have had some experience with one of those references under that act as to the section of the Planning Act; which is that by the time you get the reference under way, by the time you get it heard, by the time you get a decision, you are going to have a new piece of legislation, I think.

Mr. Cooke: But the new piece of legislation--and I have not seen it but in talking to members of our caucus who have looked at it--it is doubtful that it will have any retroactivity, and we are talking about retroactivity.

Mr. Bell: You are perfectly right. The act is silent on the point of retroactivity. Who knows what the final version will bring?

Mr. G. I. Miller: (Inaudible) after we have heard from the Ombudsman's office on their view of what the Workmen's Compensation Board has indicated now, to see if that would be satisfactory?

Sure we can take it to court, but it is going to be a long drawn out affair. If we can come to an agreement, it would seem to me that the section 42 could be much more useful, and at least they would review the 135 cases recommended by the Ombudsman.

Mr. Bell: Mr. Miller, your point is well taken. I was about to ask Ms. Catton and Mr. Goodman to speak to the matter of complaint number 25.

Ms. Catton, perhaps you could initially and briefly just summarize what stage those 135 were at when the Ombudsman took the steps that he did, as referenced in detailed summary number 25.

Ms. Catton: The cases had been with our office, some of them from the inception of the office, and it was an area that we had a considerable problem in dealing with.

What we have done is to isolate those cases pending the committee's report on complaint number 30. Upon receipt of the committee's report and recommendation we reviewed those cases and determined that the board had not made any specific findings in any of the decisions with respect to factors other than the clinical rating in determining the award under 42(1).

Therefore we wrote the report with the recommendation that



they all be reviewed giving consideration to other factors, and the cases stand as closed files in our office right now. Pending further comment by the committee or further direction by the committee, I would assume that they will remain closed.

Mr. Bell: All right. Can you confirm that for each of the 135 there were no letters to the board pursuant to section 19(3)?

Ms. Catton: There was an oral notification of Mr. Morand's intention to find the board's decision unreasonable to Mr. Warrington prior to the issuing of the report in this case.

Mr. Goodman: That notification was given on February 11, 1981.

Mr. Bell: That is the one that is referenced in the text of the report.

Mr. Goodman: That is right.

Mr. Bell: But I am talking about the fact that the cases individually were not investigated to the point that we normally see recommendation-denied cases, 19(3), 20(2), 22(4).

Ms. Catton: Yes. None of these 135 cases. There are other cases in our office where a similar issue was the subject matter of the investigation, and I think for two or three of those cases, 19(3) letters had been issued to the board on the specifics of those cases; but they are not included in these 135 cases.

Mr. Bell: All right. The Ombudsman believed that if recommendation six was adopted and that the Workmen's Compensation Board accepted that recommendation, an automatic result for each of the 135, after a reconsideration, would be a higher permanent disability pension.

Ms. Catton: No.

Mr. Bell: You did not?

Ms. Catton: No. What we thought would be fair was to ensure that all of the factors were considered in determining the amount of the permanent disability award. There is no judgement on the Ombudsman's part as to the adequacy of the pensions in any of these cases.

Mr. Bell: Well, how is the Ombudsman going to make an assessment of the Workmen's Compensation Board's response, then, to your 22(3) recommendation?

Mr. Goodman: The board has said that in determining whether or not a permanent disability award should be made under 42(1) that it limited itself to a consideration of the clinical assessment. That being the case, they have admitted that in determining whether or not an award should be made under 42(1) no other factors were taken into account, no other relevant factors in line with the recommendations of both the Ombudsman and this committee.

Since the board had not taken them into account, the Ombudsman was merely recommending that it do that. It may be that after taking them into account, the board would say that the individual is entitled to no increased award.

Mr. Bell: Are you saying that you are prepared to live with that from the beginning?

Ms. Catton: No. If the board had implemented the recommendation and if the board had reviewed--

Mr. Bell: Let me stop you for a moment. It is very important. I am having trouble following it and I am sure some members of the committee who have not been around as long as I have are having trouble.

The recommendation in number 25 that applies to each of the 135 is to reconsider the decision against an expanded interpretation of 42(1). In other words, do not confine yourself to the clinical assessment, take in all circumstances. That is the recommendation.

I suggest to you if the board had accepted that and reconsidered all of the cases against the background of all of the circumstances, you would be stuck with whatever the decision flowed.

Mr. Goodman: No, I do not think that is so. That is for the Ombudsman to determine rather than this committee. The Ombudsman would have to be satisfied that adequate steps had been taken to implement his recommendation.

For instance, if the board failed to take one of the factors into consideration--let us say age--the Ombudsman would have the authority to apply to the board and say that they had not taken adequate steps to implement his recommendation. You would have to deal with the cases on an individual basis and determine whether or not the board had done what the Ombudsman had recommended or taken steps, short of that but the Ombudsman was satisfied.

Mr. Bell: All right. To keep the record clear, the Workmen's Compensation Board has responded to the recommendation by saying, "We are not going to implement for the reasons set forth by the minister in the debate in the House." Is that correct?

Would the Ombudsman be prepared to accept as an initial response a reconsideration in the terms that I have discussed with the Workmen's Compensation Board people this afternoon?

Mr. Goodman: No, for the simple reason that the Ombudsman's recommendation was based upon his interpretation of 42(1) which the board has rejected. So I agree with Mr. Cooke's comments that you are not addressing the problem.

Do not get me wrong, I applaud the committee's attempt to find a practical solution on the cases, but we still have a difference in interpretation on section 42(1) and it was that



matter that came before this committee and was ultimately considered by the Legislature.

Mr. Bell: We will probably take that difference of interpretation with us to each of our graves. I understand it is not acceptable except the alternative the committee might have is to not make any substantive recommendation or effort to have these matters resolved in some way.

What concerns me is nothing has been done in respect of a reconsideration of these 135 cases for the reasons already given. We cannot interpret 42(1) that way. Any port in a storm, perhaps, in this circumstance, but you have given us your answer so I guess the committee will take that under advisement.

Mr. Goodman: Mr. Bell, I may be wrong, but my understanding from what was said earlier is that the board has, in considering each of these 135 cases, already considered whether or not a supplement should be awarded under 42(5). That is why I do not understand how asking them to reconsider whether or not a supplement should be awarded, having already considered that, would serve an useful purpose. However, I am--

Mr. Bell: Fresh minds, fresh approaches, somehow, some days meet with fresh results.

Mr. Goodman: I applaud any efforts you make.

2:50 p.m.

Mr. Bell: Let me ask you, do you believe that--I am trying to find a word which does not place anybody in a corner. Would the board prefer to reconsider the 135 cases against the background of all of section 42?

Mr. Darnbrough: I do not really want to confuse this thing any more than we already have. But I may have been somewhat premature in suggesting that we would review those 135 cases. Certainly, as far as Mr. Cain and I are concerned, any attempt that is made by any individual to ask for us at a divisional level to review decisions that we have made, we honour, accept and review the cases.

I must confess that I had not anticipated that at least some, if not all, of these 135 cases will have been heard through the board's entire appeal system.

Mr. Bell: All of them.

Mr. Darnbrough: In that case, my answer of we would be willing to review them has to be governed by the fact that I cannot speak for the board. I can only speak for the division and the branch which I represent. Therefore, I must defer that request to the board. I think that is where it would have to rest.

Mr. Bell: That is why I asked you, at the time, to confer with Mr. O'Brien and perhaps Mr. Warrington.

Mr. Darnborough: Mr. O'Brien instantly (inaudible).

Mr. Bell: Members of the committee, unless you consider it--unless you do not agree with the request that I am making, I would like the board to take under advisement the question of whether it--

Mr. Warrington: Mr. Chairman, if I may, through you to Mr. Bell, under the act, sir, we can only do that under section 75--reconsideration.

Mr. Bell: That is right.

Mr. Warrington: Our hands are somewhat tied.

Mr. Bell: Except that the board always responds to an Ombudsman recommendation by a reconsideration, pursuant to section 75. You use it as an appropriate vehicle for responding. I do not see any difference with this case, as with any of the others, the--as a matter of fact, we are going to see one next time where the board reconsidered one of its own decisions by way of preparing a response to the Ombudsman to his 19(3) letter.

It is obvious what I am doing. He has asked for a 42(1), an expanded interpretation and I am suggesting a 42 reconsideration to see what develops.

Mr. Warrington: With respect, Mr. Bell, the Ombudsman has not asked us for a complete review of 42 in each of the 135 cases.

Mr. Bell: I know. I appreciate that. You see, members of the committee, you are stuck no matter how we go with this. Even if the Legislature had adopted your recommendation and you would be here dealing with the Workmen's Compensation Board implementation of it, you still cannot go any further, because all the Ombudsman has asked is for a reconsideration. You would have to wait upon the results of those 135 reconsiderations before you can report to the Legislature whether and to what extent matters have been complied with.

Mr. Cooke: Even if the Workmen's Compensation Board reviewed all 135 cases under the total section 42, that would be no guarantee, as I understand it, for those 135 cases that they would have an increased, permanent pension. Most of them could then be, if they were successful, put on six months, could be three months, could be a year that they would get a little bit more money based on a rehab allowance or something.

I do not think that goes very far, if at all, towards meeting the recommendations of the former select committee or the Ombudsman. I would think that, even though the minister reacted negatively to Mr. Renwick's question, in a partisan arena of the Legislature of referring this matter out to the courts, that a nonpartisan committee, such as the Ombudsman's committee, recommending that this kind of reference out to the courts for an interpretation of 42(1) may have more impact than a question from a member of the opposition in the Legislature.



Mr. Bell: I thought of that over lunch. He is down in the Amethyst Room. I was thinking of asking over lunch, if asked, what would he say, but I resisted. Mr. Cooke, I concur with that last suggestion. I do not know how the committee could orchestrate that, but Dr. Elgie has always shown a willingness to assist the committee and perhaps if the committee could--

Mr. O'Brien: Mr. Bell, if you have no more questions relevant to directives, I would like you to excuse Mr. Cain and Mr. Darnbrough.

Mr. Bell: I would like to ask them a couple of questions about 42(5) before they leave. The first point: You would have no more guarantee of a result with the recommendation made by the Ombudsman, because again all he has asked the board to do is to reconsider in light of 42(1) expanded.

I just asked Ms. Catton as I went down to that end of the room and she concurred with my assessment again. You would still have to come back here to hear from the Ombudsman whether and to what extent all of the 135 were well treated. You have got to do that anyway in my practical suggestion.

I do not hesitate to think out loud. I am trying to avoid a situation whereby somebody goes to the wall with something that I do not think will serve the 135 people. With all due respect to Mr. Renwick's suggestion, the constitutional question that comes out of the act will be a process that will be lengthy, expensive and I am not sure in any event will achieve the result, because again you have to come down to an assessment of the individual cases.

As I said before, I hear the board with all of the caveats doing exactly what the Ombudsman has asked them to do, only against the background of the whole section.

Mr. Goodman: Perhaps you do, Mr. Bell, I certainly do not. I do not think the board does, either.

Mr. Bell: If the board does not, I would like to hear the board say so today, because I have not heard that yet and I have purposely made that comment about four times.

Mr. Cooke: They tended to agree with my comment that these would be temporary allowances, whereas what the Ombudsman is talking about is permanent pension. Is that not correct?

Mr. Goodman: Quite apart from that, there is also the gap that I have already brought to the committee's attention. Section 42(5) only covers those whose impairment of earning capacity is sufficiently greater than is usual, not those who are merely greater but not by much, they would receive no supplement under 42(5).

Again, as Mr. O'Brien has repeated, there are certain preconditions which you must satisfy to get the supplement under 42(5) that we will hear about later, but that you could posit a situation where the board, in determining whether or not a

supplement should be awarded, finds out that the person has left the country and therefore is not entitled to an award because he has not made himself available for work or co-operated, et cetera.

So even if he would have been entitled to an award otherwise, because of these preconditions he is disentitled. Those persons would not be covered who do not meet all of those preconditions.

Mr. Bell: We were told earlier this afternoon that, if any of them did not under 42(1), it would be a reasonable conclusion for the board to come to that a person was not entitled.

Mr. Goodman: No, under 42(1) the sole question is impairment of their earning capacity. There are no preconditions. The board takes into account all other relevant factors.

Mr. Bell: So you do not agree that the preconditions should be applied in 42(1).

Mr. Goodman: I would have to give that some thought. I think that the Ombudsman has considered that.

Mr. Bell: I am sorry, I thought it was answered in the affirmative earlier.

Mr. Goodman: That is certainly not what the Ombudsman had in mind when he said all of the relevant factors. He was talking about such things as age, as capabilities of the individual.

Mr. Bell: Mr. Goodman, I am sorry, I do not have any further questions or comments. I did promise you that you would have an opportunity of speaking on behalf of the Ombudsman as to his views as to the position adopted by the board as supported by the Legislature.

Mr. Goodman: Thank you, Mr. Bell. Because the legal opinions in question were obtained following the Ombudsman's letter to the Premier (Mr. Davis), obviously the Ombudsman did not have the opportunity when the matter was last considered by the select committee as the legal opinions had not yet been obtained to indicate why he continued to prefer his interpretation over that advanced by both the Attorney General (Mr. McMurtry) and Mr. Robinette in support of the board's position. The Ombudsman wishes me, on his behalf, to let the committee know why both opinions have not altered his view.

3 p.m.

Mr. Chairman: Before we get into that, Mr. Goodman, I want the two gentlemen--if you do not have any further questions for the two gentlemen who wanted to depart, perhaps this is the appropriate time to take your leave.

Mr. Goodman: I would invite the committee to turn to page 704 of the Hansard report in which, as Mr. Bell has indicated, the Minister of Labour read into the Hansard record



both legal opinions rendered. The one on page 704 is--beginning on page 704 is the opinion rendered, as I understand now, to the Minister of Labour from the Deputy Attorney General, while the second opinion, Mr. Robinette's opinion, is referenced beginning on the bottom of page 705.

Now in dealing, first of all, with the Deputy Attorney General's opinion, you will note that he gives four reasons as to why he supports the board's interpretation. One of the problems that we have already seen is we do not know what material was sent to the Minister of Labour--sent, I am sorry, by the Minister of Labour to the Deputy Attorney General. However, for the purposes of this discussion, I must assume that the Minister of Labour at least sent the Ombudsman's report and the select committee's report.

Now, you will note that--

Mr. Bell: I can help you, Mr. Goodman. Mr. O'Brien gave me a copy, at the luncheon recess, of the board's letter to Mr. Robinette. At the time that the opinion was requested, Mr. Robinette was provided with a copy of a letter to Mr. Alexander dated February 17, 1981, from the Ombudsman which, I recall, was--I am not sure what that was--a copy of the committee's eighth report which has annexed as schedules the old and the new directives and that is all. The reference is a conversation between the two and I am not sure what detail was given. So, if that will assist, Mr. Goodman.

Mr. Goodman: That may perhaps explain part of the Deputy Attorney General's misunderstanding as to what exactly the Ombudsman was finding and recommending. Because I refer you first to the right hand side of page 704, the last full paragraph from the end, and you will note that the Deputy Attorney General says to the Ministry of Labour, as follows, "The materials you sent us indicate that a wage test is used."

I do not know what materials he is referring to, but the Ombudsman never suggested that a wage test be used. In fact, quite the contrary, he suggested that under 42(1) all relevant factors be taken into consideration and that it was not simply a question of finding out what the worker earns now and what he formerly earned in subtracting the two.

Now, the second point that the Deputy Attorney General references is at the bottom of page 704 on the right hand side, and he quite properly states that, "On the face of section 42(1), calculation of the impairment is referable solely and exclusive to the nature and degree of the injury." However, the Ombudsman--and that there is no express mention of any other factor in subsection 1. That was understood when the Ombudsman found the interpretation placed by the board on 42(1) to be unreasonable.

But one of the issues was what the word "from" means. In other words, "shall be estimated from the nature and degree of the injury." Certainly the word "solely" is not included in 42(1). You will recall that this is set forth with some degree of particularity in the Ombudsman's report, that the Ombudsman was

saying, "Yes, you start from the nature and degree of the injury, but you proceed to consider any and all relevant factors," so that when the Legislature says "shall be estimated from," it does not say "solely from," and that the board is permitted then to go on and consider these other factors.

The third argument referenced by the Deputy Attorney General appears at page 705 and the first full paragraph and following, and this is his historical analysis of 42(1). It proceeds on the same faulty premise that the Deputy Attorney General proceeded from with his first argument, because you will see that the first line of his historical analysis, the reference to the history, just under the 9 p.m. note, "Section 38 of that original 1914 act clearly and expressly placed compensation for permanent disability upon the wage test only."

So again, the Deputy Attorney General is assuming that we argued wage test, which is not the case. You will see that his conclusion flows from that.

That is directly opposite that reference on page 705, the second full paragraph on the right: "It is our submission that, if the Legislature had intended the 1942 act to retain the wage principle as the exclusive test for calculating permanent disability, section 40, subsection 1 would not have been required and enacted. But the Legislature must have intended something by enactment of 40, subsection 1 and that something is, we submit, a test different from the wage test contained in 40, subsection 4."

We agree with that. They did intend something different than a wage test. That is exactly what the Ombudsman has said, that they intended a test, that you start with the nature and degree of the injury and you go on to consider all relevant factors in determining what effect that has, if any, on the person's impairment of earning capacity.

The fourth reason does not require much comment. The Deputy Attorney General appears to argue that, because the board's interpretation has never been challenged, it must be correct.

Mr. Robinette's opinion is contained at the bottom of page 705 and following. Quite frankly, the Ombudsman is surprised that Mr. Robinette would opine that 42(1) admits of only one interpretation and the one that he supports, because even the Ombudsman did not go so far as to say that.

You will recall the Ombudsman said that this section is open to at least two different interpretations and that he was merely finding that the interpretation placed upon 42(1) by the board was unnecessary and unreasonable. When Mr. Robinette advises that 42(1) requires the board, in accordance with its present practice, to make a clinical and medical evaluation of the nature and degree of the injury and nothing else, Mr. Morand has difficulty in accepting that proposition.

It was for those reasons the Ombudsman continued to prefer the opinion he expressed to the board and this committee, notwithstanding the production by the Minister of Labour of the



two legal opinions. That is again the reason why he included these 135 cases as a detailed summary asking for the Legislature's consideration and this committee's consideration of those cases.

To sum up, then, Mr. Morand continues to feel that the board's interpretation of 42(1) is unreasonable and that the interpretation he is advancing is one that is to be preferred and one that will do more justice in the circumstances of the case.

Mr. Bell: Mr. Goodman, do you or does Mr. Morand have any suggestion for the committee as to what it might do against the background of the Legislature's decision not to adopt recommendation number six?

Mr. Goodman: I think that is for the committee to decide. I do not mean to be passing the buck but obviously--

3:10 p.m.

Mr. Bell: Do you have any suggestions of alternatives that the committee might consider?

Mr. Goodman: On the question of interpretation of section 42(1), this is something the committee has struggled with in the past on other cases and, in my view, may continue to struggle with in the future. The Legislature has given the authority to the Ombudsman to conclude, among other things, that a governmental organization has acted contrary to law or has made a mistake of law; also, of course, that they have acted unreasonably in interpreting a certain section which is what the Ombudsman would hear.

Everyone recognizes that the Ombudsman's opinion is only that. It is not a binding opinion and the Ombudsman understands that and appreciates that. On the other hand, an Ombudsman who has over 18 years' experience on the bench, it seems to me that his legal opinion should, all things being equal, certainly be considered and if at all possible adhered to.

But the fact remains it is not binding. Notwithstanding this committee's recommendation, and I would suggest even with approval and adoption by the Legislature, absent a change in the legislation in the event that the governmental organization was not prepared to change their anticipation, we are going to be faced with these problems in the future, and so are you.

A suggestion has been made by Mr. Renwick that the Minister of Labour consider referring the matter under the Constitutional Questions Act. I do not know whether reference was made to the act but referring the matter to the courts was, and he indicated he was not prepared to do that.

The Ombudsman is appointed by the Legislature. He is responsible to it. He makes his report to it. I guess that is the Ombudsman's ultimate forum. It is the Legislature. The Legislature has declined to implement the recommendation of this committee and the Ombudsman.

Mr. Bell: Mr. Goodman, do you have any suggestions of possible alternatives the committee could consider?

Mr. Goodman: I have already indicated one that has been raised.

Mr. Bell: Reference under the Constitutional Questions Act for determination?

Mr. Goodman: I think the committee ought to consider whether or not it wishes to make such a recommendation.

Mr. Bell: Is there any other possible alternative?

Mr. Goodman: Given the continued interpretation placed upon section 42(1) by the board I do not think there is.

The section is proposed to amend this whole question of permanent disability pensions. There will be some of these complainants who will benefit but not retroactively, as Mr. Cooke has pointed out. Those who elect to go under the new act will receive periodic payments if they experience a wage loss. They will, I assume, so elect.

Mr. Bell: Ms. Catton, am I correct that none of these 135 cases have been investigated and considered whether it might be appropriate in addition to the section 42(1) recommendation for them to be considered under section 42(5)?

Ms. Catton: In a number of the cases the issue of sections 42(1) and 42(5) were the subject of the appeal board decision.

Mr. Bell: But the Ombudsman has not, I take it, assessed for his own purposes against his own legislation whether the decision ought to be reconsidered with specific emphasis on section 42(5).

Ms. Catton: No.

Mr. Bell: What I am saying is that it is a new ball game for you, that the circumstances of your recommendation have now changed. Do you want an opportunity of dropping back to consider your position on each of the 135 cases?

Mr. Goodman: I would have to consult the Ombudsman about that. I am not clear as to what you mean by the circumstances of change before it continues to--

Mr. Bell: The Legislature rejected the recommendation. That is what has changed.

Mr. Goodman: The Ombudsman knew that when he included it as a detailed summary--these 135 cases as a detailed summary in his report.

Mr. Bell: No, he did not.



Mr. Goodman: Yes, he did.

Mr. Bell: He could not have.

Mr. Goodman: He did.

Mr. Bell: You closed your books March 31.

Mr. Goodman: Yes, but the report was printed subsequent to March 31. The debate took place in May. The report went to printing some time later in May.

Mr. Bell: I am not sure what that means.

Mr. O'Brien, Mr. Emmink, do you have anything you would like to discuss as to what possible alternatives it has?

Mr. Emmink: I do not think so, Mr. Bell. It seems that the decision has been made by the Legislature to reject the premise on which this recommendation was advanced and I think the board is not in a position to go contrary to the wishes of the Legislature.

Mr. O'Brien: I think we would be remiss if we did not add that, if the Ombudsman wants to investigate the 135 cases, and makes recommendations for consideration under section 42(5), the board would be obligated to do it. That is to review them.

Mr. Emmink: Provided, of course, that is a complaint made by the individual in each case.

Mr. Bell: I do not think--

Mr. O'Brien: Assuming he complained about his permanent disability award; I do not have that problem.

Mr. Bell: I do not think we can get that technical. I don't believe the Ombudsman is precluded from expanding an opinion and recommendation at any stage nor at this committee, for that matter.

Mr. Goodman: Perhaps one further thing that I should say, Mr. Bell, and I am sure--perhaps this goes without saying, but the Ombudsman, as I have indicated, continues to feel that his interpretation is the appropriate one in the circumstances and will continue, notwithstanding the failure of the Legislature to adopt and approve the report of the select committee, to find complaints supported wherein the board did no more under 42(1) than make a clinical assessment.

Mr. O'Brien: It must be remembered that the board did not receive a 19(3), possible conclusions and possible recommendations on any of these 135 cases. The board agreed to waive that procedure because the Ombudsman wanted them dealt with relative to the interpretation of the section. So we waived the routine process of the 19(3) investigation and report.

I have always assumed the Ombudsman did not do any

investigation in these cases relative to any other application under the section.

Mr. Bell: Right, but that was always understood during the process that is referenced in his report, and implicit in that I suggest is that the board assumed or a possibility existed when it came before this committee that the committee would not require the usual technical requirements of the act with each of these 135, in arriving at some disposition of the cases.

Mr. O'Brien: I cannot speak for the Ombudsman but I think probably we also assumed that he probably was satisfied this was the only process by which he could recommend any adjustment relative to the worker's complaint. That is just presumption on my part.

Mr. G. I. Miller: Mr. Chairman, I think the board has offered to review the cases under section 42. The Ombudsman has made a recommendation and, while we have had a legal opinion--three legal opinions really--one from the Ombudsman--

Mr. Bell: Four.

Mr. G. I. Miller: --four and, again, the Ombudsman is to take the place of the little person, we have 135 people, while they may not benefit as much as some would hope around this committee, they may benefit somewhat.

I think that is the bottom line, really. If they are entitled to, and if they get a proper review, they could be the benefactor. I think that should be the position the Ombudsman has taken and I do not know why it would not be beneficial to carry it out.

Mr. Chairman: I thought there was some question about the board's commitment to review all those cases. I think that was indicated previously.

Mr. O'Brien: I understand this is a procedure that is set forth in the law, if you would like to call it that. The Ombudsman has a process of dealing with the complaints of people that come to him. He has made a recommendation, that recommendation has not been supported by the Legislature. If the Ombudsman has another tack that he wants to take, the board will certainly deal with it in terms of the Workmen's Compensation Act in relation to the Ombudsman Act.

4:20 p.m.

Mr. Bell: Or if the committee wishes to achieve a practical resolution to all of the matters, I take it your position would be the same. You will listen to what--

Mr. O'Brien: Is the committee in the position where they are prepared to investigate 135 cases?

Mr. G. I. Miller: No, I do not think that is the function of the committee.



Mr. O'Brien: But it is the function of the Ombudsman.

Mr. G. I. Miller: Pardon me?

Mr. Goodman: Mr. O'Brien is suggesting that the Workmen's Compensation Board needs the Ombudsman to recommend that these 135 cases be reviewed before the board has the authority to do so. I have certainly never understood the board to take that position in the past. The board can reconsider on anyone's recommendation.

Mr. O'Brien: On its own motion, but there has to be some reason for doing it. An appeal board decision has been made in each and every one of these cases that determined that there is no further entitlement other than the PD award under section 42(1). That is the appeal board's decision. If somebody is dissatisfied with that decision they are entitled to go to the Ombudsman and the Ombudsman is then entitled to make a recommendation.

Mr. Cooke: Could I suggest--could we not look at the possibility of asking that the Workmen's Compensation Board review these 135 cases under the entire section 42 and, as a second recommendation, also recommend that section 42(1) be referred to the courts for an interpretation? That looks at the 135 cases on a practical basis and also looks at the general problem of section 42(1).

Mr. Emmink: Mr. Cooke, with respect to the second one first, the board would have no comment to make. If that is the way the committee chooses to recommend, then that will be dealt with. With respect to the first, each of these cases has already been looked at in terms of the totality of section 42.

Mr. Cooke: I understood that it was said a few minutes ago, and I am getting confused, I guess--it is not difficult, although today is not nearly as confusing as last day--I understood that you had looked at these cases under 42(1).

Mr. Emmink: We have looked at them in terms of all of section 42.

Mr. Chairman: I thought--and I would have to agree with Mr. Cooke--Mr. O'Brien indicated just a few minutes ago that you only looked at them in terms of 42(1).

Mr. Emmink: No, that was the way the Ombudsman's recommendation was referenced, with respect to section 42(1).

Mr. Bell: Let me jump into this. It is too bad those gentlemen did leave. They were very clear that whenever the question of permanent disability is assessed by the board, 42(1) is part of the consideration.

Mr. Emmink: That is right.

Mr. Bell: That is not where the emphasis is, the emphasis is on 42(1), but you do go through the process. What we are now talking about is a reconsideration under all of 42, but

now with an emphasis on 42(5). So we are reconsidering but we have split our emphasis from 42(1) to 42(5). Having said that, we have to acknowledge, as does the Ombudsman's office, there is no benefit of their investigation, there is no benefit of any conclusion, there is no benefit of anything, but you did not have that benefit with the original recommendation.

Mr. Emmink: In practical application, Mr. Bell, if it is possible to place an emphasis, and that emphasis would result in some benefit to the workman, that would have been done during the overall review of the case in terms of section 42. I do not understand how, in the practical application, your suggestion could make much difference.

Mr. Bell: I admire your categorical statement.

Mr. Emmink: I am not trying to be categorical, I am just trying to understand what it is that could be accomplished through this.

Mr. O'Brien: Mr. Chairman and Mr. Bell, surely the committee can make whatever recommendation it wishes to make. If the committee wishes to recommend that the board review 135 cases that are subject to this particular discussion, that is open to the committee to so recommend. If the committee so recommends, the board will so review.

Mr. Cooke: We do not want to review just for the sake of a review. We would like to know what the practical application of that recommendation would be.

Mr. O'Brien: What you are really doing is you are moving the investigative process of the Ombudsman from those 135 cases relative to the application of 42(5) and saying to the board, "You investigate and reconsider."

Mr. Bell: That is right. But you accepted that, as far as 42(1) was concerned. Had the Legislature adopted that recommendation six, you would have accepted that process for 42(1), if I understand the arrangement and understanding between both offices prior to the Legislature's decision. Am I right?

Mr. O'Brien: That is right.

Mr. Bell: So, all we are saying is do it to 42(5), or all I am suggesting. I do not mean to presume upon any--

Mr. O'Brien: I am saying that is a decision to be made by the select committee.

Mr. Bell: Yes. But we are not doing anything earth-shattering because you have already dealt with that issue in another subsection; just changing emphasis.

Mr. O'Brien: There is nothing earth-shattering about it. The only real difference is that when the Workmen's Compensation Board reconsiders a decision that has been made, it is done on the basis of somebody supplying some new information that would



indicate there is reason for it to be reconsidered. You are basically asking us to reconsider these on your motion, without anything to indicate why they should be so reconsidered, except the wish of the select committee to do it. I am saying that I am sure that is enough for the board to do it. But it is up to you to determine whether you so want to do.

Mr. Bell: All right. Do I take it that if that was a recommendation of this committee, that recommendation would be accepted by the Workmen's Compensation Board prior to the debate of the committee's report in the House? In other words, are you going to wait upon a decision of the Legislature to that recommendation?

Mr. Emmink: These cases all have to go our corporate board, Mr. Bell.

Mr. Bell: No. That is not an answer. You have implemented recommendation number four before the--

Mr. Warrington: Mr. Bell, my concern, sir, if the recommendation was made by the committee is that, in answer to Mr. Cooke's earlier comment, I think it is an exercise in futility.

Mr. Bell: Maybe we have to hear that then.

Mr. Warrington: My concern, sir, is that each case has been reviewed twice, if not three times, on entire section 42 and you are asking us to review it again. Fine. I think I could recommend to the corporate board that be done before it goes to the House, but, again, I would be surprised if one of the 135 cases came back in the light that you would hope it would come back.

Mr. Bell: Thank you for your candour, because that had to be stated. If that is so, the committee has to weigh that very heavily, I would suggest.

Mr. O'Brien: In fairness, I should say as Mr. Warrington has said, I said nothing new has been added.

Mr. Chairman: I wonder if we do not have sufficient information on this that we can move on. We just seem to be going in circles here.

Mr. Shymko: That was a very important statement that Warrington just made that each of these 135 cases, as far as I understand it, were reviewed more than twice.

Mr. Warrington: Twice at least, if not three times.

Mr. Shymko: Twice at least.

Mr. Warrington: Claims branch, appeals adjudicator and final appeal board.

Mr. Shymko: Under the entire section 42, that is, 42(1) right up to 42(5), is it my understanding that you would give

emphasis occasionally, depending on the case, to 42(1) and sometimes to 42(5) at various stages of the case?

Mr. O'Brien: All of them are people who, I think, have had an award under 42(1). Some of them have had temporary awards under 42(5). Some of them have had nothing under 42(5) because they do not meet the criteria of 42(5) of being available for rehabilitation program or available for work. In fact, most of them are people who are in the last category. They are older people for whom no work is available and they do not meet the criteria of 42(5).

Mr. Shymko: So it is my understanding. I guess I would support the contention that it would be an exercise in futility if you would simply add another exercise of not only reviewing them two or three times, you will review these cases an additional time in applying the present criteria. The problem seems to be the interpretation of the law of that particular clause 42. The only option before the committee is perhaps to refer it to the courts through the constitutional question of validity act.

3:30 p.m.

Mr. Philip: That is not the only option.

Mr. Shymko: It is one of the--at least a major option.

Mr. Philip: One of the options can be to ask them to review it again with an emphasis on subsection 5 and not on subsection 1, as has been indicated has been their major emphasis in the total section.

Mr. Shymko: No. That is not my understanding from the answer I have just been given.

Mr. Philip: They said, and let the record show it, that a major emphasis, while reviewing the whole section, was on that one section. That is what I heard them saying.

Mr. Shymko: My understanding was not what you are saying, Mr. Philip. Apparently they emphasized according to each case. Emphasis would be put on 42(5) if a case merited that emphasis.

Mr. Chairman: I wonder if we could leave the discussion on the options available to us until we have a clear understanding of them. We can leave them until our in-camera discussion later on.

Mr. O'Brien: I would like, before we go any further, just to compliment, in effect, the Ombudsman and his function. This is why I talk about the investigative process and the things that develop from 19(3). There is not any purpose in denying that the investigative process of the Ombudsman has brought attention to the board of matters that are, in fact, resulting in some greater benefit to the workman.

Now when you say that the board will review something on its own motion, it is just human nature that it is going to be



crystallized in terms of the decision that is already made and the investigation of the Ombudsman's office has very frequently resulted in something being changed.

When Mr. Warrington says it would be a fruitless exercise if we did it on our own, I think he is just being candid with you. But there might be something in some of those 135 cases that the Ombudsman could come up with that would result in a change. I think it is their obligation under their act to do it and it should not be an obligation placed on the board arising from the select committee. It should be in their camp.

Mr. Chairman: We appreciate your comments. We will move on to the next case now.

Mr. Philip: In the interests of being candid also, I think this matter should be dealt with not in camera but in full public view since there are 135 people out there who are hurting at the moment and they should know where each and every person on this committee stands on this one issue when we do make recommendations.

Mr. Chairman: We will discuss that there. The next case.

Mr. Goodman: I am sorry. If I could respond to Mr. O'Brien and I hope that this will be the last word.

I appreciate Mr. O'Brien's comments and the compliment that he paid to the Ombudsman. I wish to assure both Mr. O'Brien, members of the board and this committee that the Ombudsman will be considering all the 135 cases, notwithstanding his report that is before you, to determine whether or not if it was a matter raised on the appeal, the board acted unreasonably in failing to give an award under 42(5).

Mr. Chairman: Thank you, Mr. Goodman.

Mr. Bell: Members of the committee, the last matter under the recommendation denied category is detailed summary number 24 in the Ombudsman's report. It is the section immediately preceding the one we have just looked at. This also deals with section 42 of the act. We may have to ask our two experts back tomorrow morning, depending on where we go on this.

They say, from the beginning, that this is a glowing example of the best of the working relationship between the office of the Ombudsman and the Workmen's Compensation Board. As you will see when you go through the materials, the issues are crystal clear and they are narrowed down to the consideration of a narrow issue, to which you are required to address your minds.

I would like to spend more time than is perhaps required with this to give you all a sense and a feel of what the committee does when it has recommendation denied cases before it. I think it will stand you in good stead the next time.

Obviously I lead the questioning to get the essential details before you so that you may then follow upon with your own

questions. The purpose of the questioning of both the Ombudsman's office and the Workmen's Compensation Board is to do two things; to give you enough information so that you can exercise your judgement in deciding whether the Ombudsman's recommendation is to be accepted, or whether the Workmen's Compensation Board's response is to be accepted; and secondly, as your term of reference requires, to ensure that the Ombudsman has complied with the necessary provisions of the act, that the investigation was carried out appropriately and that the reports and the recommendations were issued appropriately.

Ms. Catton, you will be speaking on behalf of the Ombudsman in this?

Ms. Catton: Yes.

Mr. Bell: Members of the committee, you have before you a collection of the important and relevant documentation that in the majority passed between the Ombudsman's office and the Workmen's Compensation Board, supplemented by some additional internal documentation from the Ombudsman's office, giving you an insight into how this process was carried out and how and why the Ombudsman's opinion and recommendation were arrived at.

As you can see, the first four pages is an extract from the eighth report, a detailed summary; I propose to skip over that. The fifth page is a legend. You can see that there are letters assigned to various personae. Those letters are used hereafter in the material because it is all anonymized so that the identity of the complainant and other persons affected by this investigation are not revealed. I am sure Ms. Catton will refer to the material later.

The next document, which is labelled document number one at the top, is the appeal board decision which gives rise to the complaint to your office. Is that correct, Ms. Catton?

Ms. Catton: That's correct.

Mr. Bell: Would you just describe it briefly for the members of the committee, referring them to the decision giving rise to the complaint?

Ms. Catton: On January 15, 1979--although it's dated January 15, 1978--the appeal board ruled that the complainant concluded that the 10 per cent permanent disability award adequately reflected the residual disability from the compensable aggravation of the complainant's condition, diagnosed as radiodermatitis. Also the appeal board concluded that the impairment of earning capacity is not significantly greater than is usual for the nature and degree of his injury and cannot appreciate granting the temporary special supplement.

Mr. Bell: Stopping there, the complainant in his appeal to the board asked for two things, probably in the alternative or maybe conjunctive; one, that the permanent disability assessment under section 42(1) be increased in terms of percentage.



Ms. Catton: That's correct.

Mr. Bell: Secondly, probably in the alternative, he had suffered an impairment of earning capacity significantly greater than usual and therefore was entitled to an additional dollar award under section 42(5).

Ms. Catton: That's right.

Mr. Bell: I have to make a disclosure in this case, Mr. Chairman. This case involves a member of the Royal College of Dental Surgeons of Ontario and my firm are general counsel to that college. To the extent that that poses a conflict, I have made the disclosure.

3:40 p.m.

I can assure the committee that my office has not been consulted, nor has it ever given any advice in respect of this particular complaint or this particular issue, but I don't want that becoming known to the committee in some other way. I have no interest. I do not believe that the royal college has any interest other than an interest on behalf of one of its members, which it holds in any event to this result. Unless there are any questions or concerns as to my participation in this role, I will go on.

Mr. Goodman: Mr. Bell, on that score you had earlier indicated that the board had reconsidered, as a result of the Ombudsman's 19(3) letter on this matter. That is not so. As we will see, the reconsideration came about as a result of a letter from the Ontario Dental Association.

Mr. Bell: That's the ODA.

Mr. Goodman: Yes. I assume that the ODA is not your client.

Mr. Bell: You assume wrong. We also act in some capacity for the ODA.

Mr. Goodman: In any event the reconsideration was generated as a result of a letter from the ODA.

Mr. Bell: Yes.

Mr. Goodman: I take it that did not result from advice rendered.

Mr. Bell: Briefly stated, my office has not been involved in any way, shape or form with this.

Okay. That is the decision which the person complained of. Is that correct?

Ms. Catton: That's right.

Mr. Bell: Subsequent to that decision the person sought the assistance of your office.

Ms. Catton: That's right.

Mr. Bell: Did he issue a letter to the Ombudsman, in writing, setting out the complaint, or did he attend in person?

Ms. Catton: He attended in person.

Mr. Bell: I take it that in some way his complaint was reduced to writing in the usual form.

Ms. Catton: That's right.

Mr. Bell: The next document, dated May 25, 1979, from the Ombudsman to Mr. Starr, labelled document number two, is the so-called 19(1) letter, which represents the procedure followed by your office to inform the governmental organization that a complaint has been received and what in general terms that complaint is all about.

Ms. Catton: That's right.

Mr. Bell: I don't have a second page to my copy. There is nothing we have to say about that letter. It speaks for itself.

Ms. Catton: That's right.

Mr. Bell: The third document is dated May 30, 1979, from Mr. Reed to Ms. Adams. It is a form of response to the 19(1) letter?

Ms. Catton: That's right.

Mr. Bell: In accordance with the Ombudsman's practice he gives all governmental organizations an opportunity of commenting upon the 19(1) letter and the complaint contained therein. In this case Mr. Reed, on behalf of the board, chose not to say anything further.

Ms. Catton: That's right. Just for the committee's information, normally when a response to a 19(1) letter is received in other areas, the response gives some information and that information is shared generally with the complainant prior to further inquiries being made by the Ombudsman in an attempt to rectify a complaint as early as possible.

Mr. Bell: Right. The next document, labelled number four, is an internal memorandum of your office, Ms. Catton, being a case conference memorandum.

Ms. Catton: That's right.

Mr. Bell: Would you explain the purpose and use of this memorandum by your office in this investigation?

Ms. Catton: The investigator reviews all the written documentation provided by the board. After issuing a 19(1) letter the board provides us with a complete photocopy of their file. The investigator is then charged with going through the file and



summarizing the relevant information and interviewing all necessary parties. The investigator then reduces his review to a brief summary of the file, which is presented to case conference with all of the relevant information.

The case conference, as was explained to you the other day, comprises all our legal staff, the relevant directorate, the investigator involved, the Ombudsman, special counsel to the Ombudsman, and the case is discussed in detail. The first document is the basis for the discussion at that case conference.

Mr. Bell: Can you confirm that from the date of the case conference to the end of this process, no additional facts were brought to the Ombudsman's attention which had any influence or bearing on his ultimate opinion and recommendation?

Ms. Catton: Following on the board's response to the 19(3) letter the Ombudsman requested that further inquiries be made as to the availability of work for the complainant.

Mr. Bell: With that one exception?

Ms. Catton: With that one exception.

Mr. Bell: Then the case conference is a good time to review with the committee the essential facts brought forward by the investigation and the reasons the investigator formulated his opinion at page four. Having said that, would you just take the committee through the salient facts?

Ms. Catton: To set the stage, the complainant graduated in 1922 and from then until the early 1950s, practised dentistry with the use of X-ray machines which were not adequately shielded. He developed a condition of radiodermatitis on his hand.

In 1965, when he reached the age of 65 and was no longer eligible for private insurance benefits, he approached the board for coverage because he intended to continue practising dentistry, even if it was on a reduced basis. The board accepted his application and granted him coverage.

In 1975, he approached the board for entitlement for the radiodermatitis on an aggravation basis. His original request for entitlement from the board was denied, as the harmful exposure to the radiation had occurred prior to the date that he had applied for benefits. This was subsequently overturned and the board did grant him entitlement on an aggravation basis.

In 1975, he was advised by three different doctors to close his practice. He saw his last patient in March 1976, and he contended that he was actively seeking work following March 1976, actively seeking some kind of suitable employment because, although he could no longer practise dentistry, he still wanted to be involved in the area.

The board was originally advised by their doctor--as referenced on page two, Dr. A--that there would be no reason for him not to go back to dentistry if he wore gloves. According to

the doctor many dentists wear gloves, even without vulnerable skin. The doctor subsequently presented additional information to the board and it was determined that gloves were not practical for him to use. Also, the constant washing of his hands while he practised dentistry caused further problems to his hands. So it was clear that he could no longer practise dentistry.

The information contained on pages three and four of the case conference memo really speaks to whether or not he was able to practise dentistry. I don't think that is of particular importance to the committee at this time.

If you go to the bottom of page four, the investigator's opinion regarding the disposition of the case, the investigator advised case conference he was of the opinion that the 10 per cent award was not unreasonable and therefore he made no further comments. However, it was his opinion that it was unreasonable for the board to deny a special supplement under 42(5). He recommended to the Ombudsman that the conclusions that were on pages four and five be presented to the board.

Mr. Bell: Just stopping there, the two aspects of the complaint have now been dealt with at least at the investigative stage?

Ms. Catton: That is right.

3:50 p.m.

Mr. Bell: And the investigator says, "I think that 10 per cent is all right. However, for the reason expressed, there should be something done under section 42(5)." That is a possible way in which the 135 cases can be dealt with, is it not?

Ms. Catton: I admire your tenacity, Mr. Bell, but I really think--

Mr. Bell: Forget it. Let us get on with it.

Mr. Goodman: Perhaps before you proceed, Mr. Bell, Ms. Catton could refer to the pensions adjudicator's conclusion, as set forth on page four of the case conference summary, which is pertinent to the committee's considerations.

Mr. Bell: Well, if she is so advised.

Ms. Catton: After the complainant was assessed for his 10 per cent permanent disability award, the matter was referred to the pensions adjudicator, who concluded: "This is a very peculiar case in that we have an individual who can not return to his pre-accident work because of compensable disability, and who has no intention of retiring. Were it not for the man's age we would normally consider a temporary settlement. It is not really felt that we can discriminate because of age and, as absurd as the comment may seem, following the interview today it is felt by the pensions adjudicator that this man is entitled to a temporary supplement especially as were it not for the compensable condition the man would still be working at this time."



Mr. Bell: And the balance of the case conference memorandum deals with a suggested possible conclusion that the Ombudsman might refer the board to. Is that correct?

Ms. Catton: Yes, that is correct.

Mr. Bell: With reasons set forth on page five. Then at the bottom of page five is the possible recommendation.

Ms. Catton: That is right.

Mr. Bell: That was considered by your office sometime between November 14, 1979, and December 14, 1979.

Ms. Catton: That is right.

Mr. Bell: As a result of the case conference Mr. Morand issued the next document, members of the committee, to Mr. Starr. That is document number five. It has a date of December 14, 1979. This is the so-called 19(3) letter.

Ms. Catton: That is right.

Mr. Bell: In the letter Mr. Morand really sets out the content of the case conference memorandum dealing with the possible conclusions and possible recommendations. Is that correct?

Ms. Catton: That is right.

Mr. Bell: All right. The next document I have, labelled number six, is a decision of an appeal board panel on a reconsideration, dated December 31, 1979, and obviously subsequent to the 19(3) letter. What do you have to say about this?

Ms. Catton: Simply the complainant took it upon himself to make the application, with the assistance of the Ontario Dental Association, while we were in the course of our investigation.

Mr. Bell: So is it a red herring?

Ms. Catton: It really is a red herring.

Mr. Bell: Let us go on to number seven.

Ms. Catton: The only significance of that is that there was a delay on the board's part in responding to the 19(3) pending the further decision of the appeal board.

Mr. Bell: What do you have to say about the document?

Mr. Goodman: We do not mean to attach any pejorative significance to the delay because, quite properly, the board had a request for an appeal. It was going to consider that reconsideration before responding to us.

Mr. Bell: That is about the fourth time we have had words of immunity today. What do you have to say about document number seven, from Mr. Emmink to Mr. Morand?

Ms. Catton: This just explains the delay.

Mr. Bell: All right. Document number eight, therefore, from Mr. Starr to Mr. Morand, dated March 3, 1980, is the formal 19(3) response. Am I correct?

Ms. Catton: That is correct.

Mr. Bell: I am not going to ask you to speak to that. Mr. Emmink and Mr. O'Brien will do that. I just want to refer members of the committee to page two. The third full paragraph sets forth at that point in time the board's reasons why 42(5) is not appropriate. I think that really sets forth the board's position at that time.

Mr. Emmink: I do not know what you can really add to that.

Mr. Bell: I do not think there is anything you can add to it; it cannot be any clearer. I intend to get back and ask you a few questions about it.

Mr. Goodman: Provided, Mr. Bell, you specify "at that time," because the committee will see that that decision is modified.

Mr. Bell: Just bear with me, we will have this distilled down to four words by the time it comes up.

Document number nine, a letter from Mr. Morand to Mr. Starr, April 15, 1980, is a covering letter for the 22(3) report, is that correct?

Ms. Catton: That is correct.

Mr. Bell: And document number 10 is the report itself.

Ms. Catton: That is correct.

Mr. Bell: This is the report issued by Mr. Morand pursuant to section 22 of the act wherein he sets forth his opinions under 22(1), is that correct?

Ms. Catton: That is right.

Mr. Bell: And his recommendations under section 22(3).

Ms. Catton: That is right.

Mr. Bell: It seems to me that the first five pages are really a rehash of everything we have seen up to date.

Ms. Catton: That is right.

Mr. Goodman: If you can turn to page six, wherein the Ombudsman addresses the representations which he received from the board, but we have heard everything prior to that.



Mr. Bell: Okay. Carrying on from there, Ms. Catton, what do you have to say about the text of page six?

Ms. Catton: If you refer to the first two paragraphs, the Ombudsman noted that the complainant had co-operated, was unable to practise dentistry, was available for medical and vocational rehabilitation and was available for employment suitable to him. The Ombudsman did note, however, that the board was not able, nor did it attempt to assist the complainant either with appropriate retraining or job placement.

It is precisely because the board could not offer him any other assistance that he is entitled to benefits under section 42(5), in accordance with its own policy. Because there are no employment possibilities apparent, it must be concluded that the impairment is significantly greater than usual. The Ombudsman therefore concluded that it was unreasonable to deny supplementary benefits under section 42(5) and recommended that the board vary its decision and award a temporary supplement.

Just to crystallize the Ombudsman's position, he was of the view that there was no onus on the complainant or anybody to prove entitlement. The board must then, given an application for benefits, consider whether or not the person has entitlement and investigate to determine whether or not the person was included under the provisions of the act. In the same manner, the board, in determining that the person is not entitled to benefits, must satisfy itself with empirical information that the complainant is not entitled to those benefits.

Basically, the Ombudsman's position is that there is no empirical evidence in the board's file or presented by the board to establish that there was no work available for the complainant.

Mr. Bell: All right, and to put that in context, I do have to refer back to the previous document, number eight, page two, Mr. Starr's response to the 19(3) letter. He states that, "The information available clearly demonstrates, in the opinion of the board, that there is no reasonable medical or vocational rehabilitation program available that will aid in returning Blank to employment nor, in the opinion of the board, does the information provided by Blank and the information obtained by the vocational rehabilitation branch indicate there is any employment available which is suitable for Blank's capabilities."

Mr. Morand's comments, which you have just read, take issue with that statement.

Ms. Catton: That is right.

4 p.m.

Mr. Bell: Do you understand at that point in time the board's position to be that, in addition to the requirement that the person be available for work or for the vocational program, there has to be a program or work existing?

Ms. Catton: That is right.

Mr. Bell: Following upon document 10 of Mr. Morand's report is another case conference memorandum dated May 8, 1980. It is labelled as document 11. Could you explain the significance of that memorandum to the committee?

Ms. Catton: Before proceeding under section 22(4) and (5), the Ombudsman had the practice of returning the case to case conference for further consideration to see if it was appropriate to go to the Premier and then on to the select committee. This is the synopsis and the summary of the arguments presented by the board, and the investigator's opinion as to whether or not the Ombudsman should proceed.

Mr. Bell: Is it fair to--

Mr. Goodman: The memorandum chronologically, you will see, was after the Ombudsman's report but prior to the response by the board, and during that interim period a meeting took place between representatives of our office and representatives of the Workmen's Compensation Board. The memorandum references the meeting.

Mr. Bell: It should be stated that that type of meeting is consistent with the working relationship between the two offices, wherein questions may arise from the Ombudsman's report and this type of meeting is held so that all those issues can be discussed and resolved. In any event, I think it is safe to categorize the position taken by the board to be a reluctance to implement the recommendation for reasons centred upon age of this individual. Is that correct?

Mr. Goodman: The first three centre upon that. I guess we will have to hear from the board as to whether the fourth does.

Mr. Bell: Yes. Somebody at page two thinks that age is a red herring because the person carried on a part-time practice until 1976 and for the last 10 years paid premiums to the Workmen's Compensation Board.

Document 12 is a further memorandum of the case conference, June 5, 1980. What is this about?

Ms. Catton: As a result of the case conference for May 8, the Ombudsman requested that we make inquiries to determine whether or not in fact there was work available for the complainant. This memorandum dated June 5 speaks to what work was available or the possibility of work for the complainant basically.

Mr. Bell: The conclusion contained in the memorandum is what?

Ms. Catton: That there is work available, perhaps not as a consultant dentist because, generally speaking, to be a consultant requires that you are in actual practice. Since the complainant was unable to continue his practice even on a part-time basis because of the condition of his hands, they would not be workable before him as a consultant. However, there would be other work available for him.



Mr. Goodman: There is also reference, you will note, to certain board vocational rehabilitation memoranda which I think ought to be highlighted. On page two, reference is made to a memorandum dated August 24, 1979, wherein it is noted it was explained to the complainant that referral of his file would not be made to the employment counsellor. This was based in part on the type of work he is requesting. It was felt that with his vast exposure and experience in the field of dentistry he would have knowledge of who to contact for a dental consultant position. As such, he was best equipped in locating this type of work.

The memo also noted that he would consider other employment alternatives within reason. When he was asked if he would accept a clerical position, he stated he would consider it, although not necessarily accept it. Then a further memorandum is referenced dated October 8, 1979, wherein the recommendation is stated, "Realistically there is nothing further that VRD"--that is vocational rehabilitation division--"can offer in terms of job placement assistance."

It is on the basis of those very memoranda in the Workmen's Compensation Board file that the investigator submits that the complainant had to ask for assistance. He stated he would consider positions other than in the dentistry related field, but neither assistance nor direction were offered to him and, therefore, it would be inappropriate for the board to state that there was no employment available for him.

Mr. Bell: The next document, number 13, is the formal response of the board to the Ombudsman's report. Just to keep our record complete, it does reference a meeting between Mr. Morand and some board representatives prior to July 2, 1980, but after Mr. Morand's report. Is that correct?

Ms. Catton: That is right.

Mr. Bell: Can you confirm that the items set out in the case conference memoranda, documents 11 and 12, were discussed with the board representatives?

Ms. Catton: I was not at the meeting but I assumed that they were.

Mr. Bell: It is this document which I believe distils the issues down to the very narrow one which the committee should hereafter concentrate on. Do you agree?

Ms. Catton: Yes.

Mr. Bell: If you will permit me, members of the committee, I think if you turn over to page two, the first full paragraph really says it all as far as the board is concerned, "The board then accepts that the impairment of earning capacity is greater than usual in the case." Therefore, one of the requirements of 42(5) the board has accepted.

"The board also accepts that Blank has demonstrated a willingness to co-operate in a vocational rehabilitation program to

place him back into the work force. Implicit in this is availability for employment." So another requirement of 42(5) is acknowledged or accepted by the board.

Here is the remaining problem which really is standing in the way of the board accepting the recommendation: "The problem arises, however, as is pointed out in Mr. Starr's letter of March 3, 1980, in the requirement of the statute that he be available for work 'which is available'--that is taken right from the section--"has not been met. Through the efforts of Blank, in co-operation with the vocational rehabilitation branch, the board is satisfied that there is no work available for Blank which is 'suitable' for his capabilities."

"The board cannot accept that the legislation intended to provide supplementary benefits in cases where there is absolutely no indication that suitable work will become available. Such benefits, in the opinion of the board, were intended to assist an injured employee temporarily during a period of financial hardship while the injured employee was actively engaged in looking for work for which he was available, but which the injured employee had not yet been able to secure."

It gives members of the committee some insight as to what the board considers 42(5) to be available for.

Similarly: "The board is of the view that there really is no medical or vocational rehabilitation program available in which Blank could be placed to lessen or remove his handicap. In reviewing all of the circumstances, the board cannot agree with the Ombudsman's recommendation."

Is that fairly stating it, Ms. Catton?

Ms. Catton: Yes.

Mr. Bell: Do you have anything else to add to assist the committee in terms of the board's response?

Mr. Goodman: I think that the committee should know the reasons why the Ombudsman decided to proceed to the Premier and was unable to accept the argument advanced by Mr. Starr--I am sorry, by Mr. Alexander. That is referenced on page 68 of the Ombudsman's annual report and is included, I believe, as your first document, the detailed summary.

4:10 p.m.

The first full paragraph, page 68 of the Ombudsman's annual report: "After reviewing the board's response, the Ombudsman concluded that it was not adequate or appropriate in respect to his recommendation. In his opinion, there was work available to senior citizens in the general labour market. In the Ombudsman's opinion, there was no evidence to indicate that there was no work available to the complainant."

In other words, what he is saying is that the board ought not to have been satisfied that there was no work available which



is suitable for the complainant's capabilities, given the kind of investigation that had been conducted by the vocational rehabilitation branch.

Ms. Catton: In fact, Mr. Bell, the board in its response says that, "Through the efforts of Blank, in co-operation with the vocational rehabilitation branch, the board is satisfied that there is no work available which is suitable for his capabilities."

In his review of the documentation, the Ombudsman was unable to find any efforts made by the vocational rehabilitation board to assist the worker or to determine what work was available, except where the one job possibility outlined to him, the matter of a dental technician, which would result in exactly the same problems he had as a dentist.

Mr. Goodman: One final thing. I know, Mr. Bell, you prefer to refer to all these items as being conditions that the worker must satisfy or that the board must be satisfied the worker complies with in order to qualify under 42(5). But the Ombudsman characterized it a wee bit differently. He characterized it in the following fashion, "Where impairment of earning capacity of the employee is significantly greater than is usual for the nature and degree of his injury, prima facie he receives, under the scheme of 42(5), a supplementary award."

However, provided that one, two, three, four--these are specified in 42(5). I do not intend to go through them. One of them is that he is available for employment which is available and which, in the opinion of the board, is suitable for his capabilities. So the board ought to perform all the necessary inquiries to satisfy itself that the claimant is disentitled, having found prima facie, as Mr. Alexander admits, that he was otherwise entitled. His earning capacity was significantly greater than is usual for the nature and degree of his injury.

Mr. Bell: Another way of putting that, I take it, because age is a factor in this case, is that, as far as the Ombudsman is concerned, all somebody of senior years has to demonstrate is a readiness, a willingness and an ability to work.

Ms. Catton: The Ombudsman is not of the opinion that a temporary supplement--there has to be some work available to the complainant. But the board has to go out and determine that there is no work available. They just cannot blanketly say there is no work available.

Mr. Goodman: They cannot do so, again, because you asked about age, merely because someone reaches age 65 or whatever. We all know of instances such as Mr. Justice Emmett Hall and Mr. Justice McRuer.

Mr. Bell: You don't have to go to them, particularly since, 10 years after age 65, this man had been paying benefits and premiums to the board.

Mr. Goodman: And the board accepted them.

Mr. Bell: This gentleman is now almost 82.

Ms. Catton: He is 84 according to my caculations.

Mr. Bell: He is 84. Is the Ombudsman suggesting by his recommendation that this person receive these temporary benefits indefinitely?

Mr. Goodman: No, he is not doing that at all.

Mr. Bell: Can you assist the committee as to a time frame here contemplated by the recommendation?

Mr. Goodman: There is no time frame contemplated by the recommendation. The board would have to satisfy itself, having made the appropriate inquiries, looking at each case individually, that there is no work available, that the claimant is not available for employment which is available and which in the opinion of the board is suitable for his capabilities.

Mr. Bell: Let us try it this way. Is the Ombudsman of the opinion that as of September 15, 1981, this person is still entitled to temporary benefits under 42(5)?

Mr. Goodman: I think that is for the board to determine.

Mr. Bell: No, I am asking the Ombudsman.

Mr. Goodman: All I can say is that the Ombudsman was of the view when he made his report dated April 15, 1980, that the Workmen's Compensation Board vary its earlier decision and award the complainant a temporary settlement.

Mr. Bell: Then the Ombudsman I take it is prepared to leave it to the discretion of the Workmen's Compensation Board if the Workmen's Compensation Board was required to grant a 42(5) benefit, to leave the decision to the board when that benefit should terminate.

Mr. Goodman: Well certainly in the first instance. No question. The Ombudsman would then have to--you are asking me to--

Mr. Bell: You cannot have it both ways.

Mr. Goodman: No, you are asking me to indicate what the Ombudsman will do, not having received a positive response from the Workmen's Compensation Board, and I cannot anticipate what he will do.

Mr. Bell: Well, you cannot have it both ways. You cannot on the one hand say that the Ombudsman does not have a view as to when this benefit should or should not terminate, and then on the other hand say if the recommendation is implemented, we will wait upon the day that the board terminates it and then decide whether that is an unreasonable one.

Mr. Goodman: I am the last person to suggest that the Ombudsman should have anything both ways. On the other hand, I am



sure you can appreciate that, for instance, if the board awarded a temporary supplement for one week following its termination of benefits, the Ombudsman would have to consider whether that is an adequate and appropriate response to his recommendations.

Mr. Bell: How would you do that?

Mr. Goodman: I am not the Ombudsman so I cannot say.

Mr. Bell: You are speaking for him, Mr. Goodman.

Mr. Goodman: I am saying that the Ombudsman would consider the response in light of his recommendation. I cannot give you any more assistance. I am sorry.

Mr. Bell: Okay.

To complete this chronology, Ms. Catton, document number 14 is the report that was issued to the complainant, am I correct?

Ms. Catton: It is the covering letter that is attached with the report.

Mr. Bell: Which also forms part of his report to the complainant?

Ms. Catton: That is right.

Mr. Bell: All right--which he sends in all cases of this nature where 22(3) has not been accepted. Is that correct?

Ms. Catton: That is right.

Mr. Bell: Document number 15 is the letter--

Ms. Catton: Just further--if the Ombudsman finds that he is not going to proceed to 22(4) and 5, (inaudible) change.

Mr. Bell: Okay. Document number 15 is the letter of reference of the report to the Premier pursuant to section 22(4) of the act, is that correct?

Ms. Catton: That is right.

Mr. Bell: By a rule passed by the committee that is a procedure required of the Ombudsman's office where he intends to ask the Legislature through this committee for support of his recommendation, is that correct?

Ms. Catton: That is right.

Mr. Bell: Document number 16, although it is poorly reproduced, is the type of response that is received by your office from the Premier. I think it is fair to say that the Premier consistently has acknowledged receipt of the 22(4) letter and the Ombudsman's report, expressing appreciation that he has been informed of the process. Is that correct?

Ms. Catton: That is right.

Mr. Bell: I can blame you for the photocopy?

Ms. Catton: Yes.

Mr. Bell: The last document, number 17, is a reference to Dr. Elgie, the minister, of his report which he is required to do under the act, as "head of the governmental organization," or the minister responsible--

Mr. Goodman: The minister concerned.

Mr. Bell: --the minister concerned. Now is there anything else you wish to add by way of explanation or assistance to the committee in understanding the basis of your opinion, report, your recommendation?

Ms. Catton: No.

Mr. Bell: Mr. Chairman, it might be an appropriate time to adjourn until tomorrow morning, rather than start with Mr. Emmink and Mr. O'Brien for five minutes, only to adjournment.

4:20 p.m.

Mr. Chairman: No disagreement on that? I do not detect any.

Mr. Bell: Is there any problem with that? As usual, my schedule is overly optimistic, but we are still in good shape.

I would suggest that obviously what we are going to be doing tomorrow is taking a look at 42(5), the board's interpretation in the context of the gentleman's age and of the conclusion the Ombudsman has reached that you have a requirement to ascertain what is available in the work force and to assess the conclusions against the particular workman, and this workman especially.

If you believe you would be assisted by the two gentlemen that were here this afternoon, if they can spare another hour, it would be greatly appreciated.

I intend also to discuss with you how many conditions there are in 42(5), whether there are two, three or four, and whether compliance is necessary in each case for each one; and if they will assist you, or if anybody else will assist you in that exercise, we would appreciate it if you could bring them along.

Mr. O'Brien: We will make sure we will have somebody here, an expert, in that regard.

Mr. Bell: I am not saying that you gentlemen are not, but if you feel--

Mr. O'Brien: There is always someone more expert than us; and probably, because of my advanced years, I might make some comments other people might not.



Mr. Goodman: Mr. Chairman, before you adjourn, I hesitate to keep the committee members but there were a number of undertakings that I gave last time, and I am wondering whether you wish me to indicate to you the results of my inquiries now or tomorrow--

Mr. Chairman: Is there any problem with doing it tomorrow?

Mr. Goodman: None whatsoever.

Mr. Chairman: All right. Fine. We shall leave it until tomorrow then.

The committee adjourned at 4:25 p.m.

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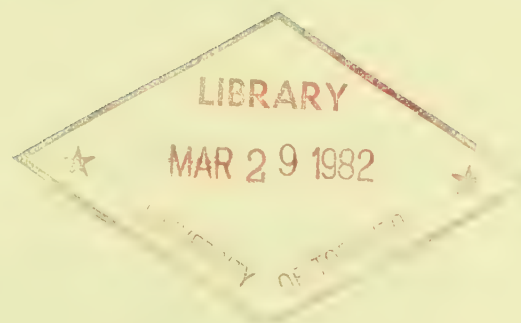
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SELECT COMMITTEE ON THE OMBUDSMAN

OMBUDSMAN'S EIGHTH REPORT

WEDNESDAY, SEPTEMBER 16, 1981

Morning sitting





SELECT COMMITTEE ON THE OMBUDSMAN

CHAIRMAN: Runciman, R. W. (Leeds PC)  
Andrewes, P. W. (Lincoln PC)  
Barlow, W. W. (Cambridge PC)  
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Cooke, D. S. (Windsor-Riverside NDP)  
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Philip, E. T. (Etobicoke NDP)  
Shymko, Y. R. (High Park-Swansea PC)  
Van Horne, R. G. (London North L)

Clerk: White, G.

Counsel: Bell, J.

From the Office of the Ombudsman:

Catton, N., Assistant Director of Special Services

Goodman, B., Counsel and Special Adviser to the Ombudsman

From the Workmen's Compensation Board:

Emmink, A., Assistant Ombudsman Administrator

O'Brien, L. F., Ombudsman Administrator

LEGISLATURE OF ONTARIO

SELECT COMMITTEE ON THE OMBUDSMAN

Wednesday, September 16, 1981

The committee met at 10:10 a.m. in committee room No. 1.

OMBUDSMAN'S EIGHTH REPORT  
(continued)

Mr. Chairman: I see a quorum. We will get under way.

Mr. Goodman, before we broke yesterday you had something you wanted to say. Would this be an appropriate time?

Mr. Goodman: Mr. Chairman, it will be recalled when we were dealing with the complaints from the public--

Mr. Bell: Oh, I'm sorry, Mr. Goodman. Can we still hold off on that until we finish the Workmen's Compensation Board?

Mr. Goodman: Certainly. It has nothing to do with the case we were discussing.

Mr. Bell: I think the chairman was referring to something that you might have to say with respect to the Workmen's Compensation Board, but to further save that until we finish with this case.

Mr. Goodman: Yes.

Mr. Bell: We are going to be dealing with communications from the public immediately after this and we will do it then.

Mr. Goodman: That's fine.

Mr. Chairman: We will carry on with the case we were discussing yesterday.

Mr. Bell: We had just finished reviewing the chronology of the investigation and the Ombudsman's report with Ms. Catton and Mr. Goodman. I wish now to speak with Mr. Emmink and Mr. O'Brien respecting the board's response and reasons therefor.

First, referring back to document number eight, Mr. Starr's response to the 19(3) letter. Do you have that, Mr. Emmink?

Mr. Emmink: Just a moment. Yes, I have it.

Mr. Bell: If you would turn to the second page. This deals now with the board's reasons why section 42(5) is not an appropriate consideration for this case. The first paragraph states that section 42(5) "requires that the employee either co-operate or be available for a medical or vocational program which would in the opinion of the board aid in returning him to work."



As we will see from the final response of Mr. Alexander, those two matters are no longer in issue. I think the board agrees that the person has co-operated and is available for a medical or a vocational program. Is that correct?

Mr. Emmink: Except that there is no vocational rehabilitation program available.

Mr. Bell: I am going to get to that. That is the second paragraph where Mr. Starr indicates that: "The information available clearly demonstrates in the opinion of the board that there is no reasonable medical or vocational rehabilitation program available that will aid in returning Blank to employment, nor in the opinion of the board does the information provided by Blank and the information obtained by the vocational rehabilitation branch indicate that there is any employment available which is suitable for Blank's capabilities."

I want to understand and have the committee understand, is the board saying, on an interpretation of section 42(5) that, for there to be any consideration for entitlement, there have to be medical or rehabilitation programs already in place?

Mr. Emmink: There would have to be something available in terms of medical or vocational rehabilitation programs. Failing that, there would have to be some work available.

Mr. Bell: That is an either/or proposition you have just given me. The way it is written here, the board seems to be saying that there is a requirement that there be both a medical or a rehabilitation program available to aid and that there be in addition work available for that person.

Mr. Emmink: That is what section 42(5) states.

Mr. Bell: As interpreted by the board.

Mr. Emmink: It states that. I don't think there is any interpretation necessary.

Mr. Bell: Then maybe it's a good time to go to section 42(5). Members of the committee, Mr. White distributed copies of the section to you yesterday. In any event, I believe it is set out somewhere in the material.

Mr. Goodman: I should say while you are looking for it, Mr. Chairman, that it has never been our understanding of Mr. Alexander's position that the claimant had to satisfy both conditions. Certainly his 22(3) reply appeared to indicate that the only reason the complainant was denied a supplementary allowance was because he was not available for employment, which is available and which in the opinion of the board is suitable for his capabilities. You have already heard that there was no medical or vocational rehabilitation program which would in the opinion of the board aid in getting him back to work.

Mr. Bell: I am going to assume the role of clerk right now and give you copies of the section.

Mr. Goodman: You will note, and I am sure Mr. Bell will deal with the section, the section clearly says "or" and that we have always felt that the board was taking the position, as our office did, that "or" was disjunctive, rather than conjunctive. In other words, the claimant had to satisfy one or the other but not both.

Mr. Bell: I think it is a good time now to take a hard look at that section so that we can more fully understand the final response by Mr. Alexander and, in fact, Mr. Starr's response here. Do you have the section in front of you, Mr. Emmick?

Mr. Emmink: Yes, I do, Mr. Bell.

Mr. Bell: It is now section 43 which will further add to our confusion. Just bear with me for a moment and I am going to give you what I believe to be--

Mr. Emmink: You mentioned section 43?

Mr. Bell: Yes. Is it not now section 43?

Mr. Emmink: No. It is still section 42(5).

Mr. Bell: I have Revised Statutes of Ontario--I have a photocopy of the Workmen's Compensation Act, Chapter 539, given to me by Mr. White yesterday and section 43 deals with permanent disability. Section 43(5) says, "Notwithstanding subsection 1, where the impairment of earning capacity of the employee..." I don't want to get bogged down with whether it is 42 or 43. I think I have got 1980 Statutes of Ontario and I think they have changed the chapter.

Mr. Emmink: As long as we are talking about the same section.

Mr. Bell: We are. I would just like to go through this with you and understand how the board interprets that. It is very clear this periodical payment is, in any event of the permanent disability assessment, in subsection 1. There has to be an impairment of earning capacity of the employee. Is that correct?

Mr. Emmink: That is correct.

Mr. Bell: As Mr. Goodman pointed out to us yesterday, there has to be an impairment which is significantly greater than usual for the nature and degree of the injury.

Mr. Emmink: That is correct.

Mr. Bell: That is the Glenn Gould type of situation. The effect of the loss of his hand would be significantly greater respecting his earning capacity than for Bell, for example. It goes on to provide discretion.

This is a discretionary benefit because it says the board may supplement the amount. You have to have two things: You have to have a permanent disability and you have to have an impairment



of earning capacity significantly greater. They are the first two conditions that are required before the board would even begin to consider exercising its discretion.

I would like to skip over the next few lines dealing with the monetary maximum because I don't think it will assist us in deciding whether somebody is entitled. That only determines the extent of the entitlement.

When we get down to about the sixth line from the bottom of this section and we start what I categorize as the other conditions required before the board may exercise its discretion, it says, "and provided that he co-operates in and is available for a medical or vocational rehabilitation program which would in the opinion of the board aid in getting him back to work."

Now stopping there, do you agree with me that there are two conditions required in what I have just read? They are that the person co-operates in a medical or rehabilitation program and is available for that program. So co-operation and availability are absolutely required. You cannot permit one without the other.

10:20 a.m.

Now we come to the last part. I would like to know, for the remainder of this section, whether the board considers these to be necessary as well, because it reads, "which would, in the opinion of the board, aid in getting him back to work...or accepts or is available for employment which is available and which in the opinion of the board is suitable for his capabilities."

Does the board interpret this section as requiring one of those two conditions in addition to the previous ones we have already examined?

Mr. Emmink: No, it would have to be either/or. I agree that the "or" is disjunctive rather than conjunctive.

Mr. Bell: Okay. In circumstances, so long as a person co-operates in and is available for a medical or vocational rehabilitation program.

Mr. Emmink: That would have to be available before he can co-operate. It might not be available for him.

Mr. Bell: I am slow; let's just do one at a time. So long as a person co-operates and is available for, we do not care about the last part, "accepts or is available for employment which is available and which in the opinion of the board is suitable for his capabilities," right?

Mr. Emmink: That is true.

Mr. Bell: On the other hand it is possible that a person could accept or be available for employment which is available, and we do not worry about whether he co-operates in or is available for a rehabilitation program. Do you agree with me on that?

Mr. Emmink: Yes, that is true.

Mr. Goodman: I would suggest, further, that if he either accepts or is available, it would satisfy the last condition. In other words he does not have to accept and be available. You will notice that there is a distinction between that second requirement and the first because, as you quite rightly pointed out, the first condition would require that he co-operates in and be available. The last condition only provides that he accept or be available for employment.

Mr. Bell: We understand that, Mr. Goodman. I thought Mr. Emmink made that clear that they are disjunctive from the other two conditions and from themselves. Obviously if you accept employment, availability for employment is rather academic.

Mr. O'Brien: There is just one point that I think I should bring forward about the second part of that proviso, "or accepts or is available for employment which is available." I think it is also important to stress that this employment which is available or which he accepts, must be employment that in the opinion of the board is suitable for his capabilities. So it is not appropriate for him just to accept any kind of a job. It is not that he has to be available for any kind of a job; it has to be work which is suitable for his capabilities.

Mr. Bell: I understand that and we will get into examining that requirement against the facts of this person when we go to Mr. Alexander's letter.

Mr. O'Brien: On Mr. Alexander's letter, I think it is important to realize that the word "reasonable" is included in that response relative to the first part.

Mr. Bell: Before we get to his letter I want to make sure that we have said everything that needs to be said about 42(5). The board states that unless there is a medical or vocational rehabilitation program in place, the person is not entitled to any consideration for a periodical payment under this section. Is that right?

Mr. Emmink: I do not believe so. There is that and there is also the further proviso about accepting and being available for employment. It is not turned down on just those.

Mr. Bell: Under the first two conditions, "co-operate in and available for," the board requires there to be either a medical or a rehabilitation program already in place at the time of the injury before any person can be considered eligible for periodical payments.

Mr. Emmink: At the time of the injury?

Mr. Bell: At the time of the application for compensation.

Mr. Emmink: No, I do not think so, Mr. Bell. It would have to be in place at the time the request for assistance is made.



Mr. Bell: Okay, that is a better time. And if a person's particular injury and disability were of a nature that no existing medical or rehabilitation programs would assist that person, he would not be entitled for consideration under this section. Is that right?

Mr. Emmink: No.

Mr. Bell: Then I do not understand what Mr. Starr said in his letter.

Mr. Emmink: What is said in that letter is that in this particular case, there were no medical rehabilitation programs and no vocational rehabilitation programs available. So, he could not co-operate in and be available for something which did not exist.

From there you go to the second part of the proviso; was he available for or did he accept employment which was available. He might have been available for employment and he might have accepted it if it were available, but it was not available.

Mr. Bell: Does that explain the reason for the change in emphasis from Mr. Starr's letter to Mr. Alexander's letter? Mr. Alexander really starts off by saying: "Let's lay the 'co-operation in and available for' to rest. Let's get back to the remaining issue." Is that right?

Mr. Emmink: Yes.

Mr. Bell: So, hereafter, we do not have to be concerned about the co-operation and availability issue?

Mr. Emmink: No.

Mr. Bell: Then let's turn to Mr. Alexander's letter, document 13.

Mr. Goodman: May I assist the committee before you do so by indicating that, as Mr. Emmink has indicated, it was our understanding that Mr. Starr took the position that the claimant did not satisfy either of those conditions, that that position subsequently changes so that we do not have to worry about compliance with the first condition, that he co-operates and is available, but only whether he satisfied the second condition.

Mr. Bell: In page two of this letter, dated July 2, 1980, the first two sentences of the first full paragraph are just what we have been talking about, where Mr. Alexander accepts that the impairment is greater than is usual or, in the words of the legislation, "significantly greater." He then accepts that the person has demonstrated a willingness to co-operate in, and he says implicit in that is availability for employment.

Just stopping there; what does Mr. Alexander mean when he says, "Implicit in this is his availability for employment"? Is that an expression by Mr. Alexander that this person is available for employment?

Mr. Emmink: Yes.

Mr. Bell: So the board is prepared to accept that he is available for employment?

Mr. Emmink: Yes.

Mr. Bell: Is that to be taken as the board's expression that the very last condition in 43(5) is now satisfied?

Mr. Emmink: No.

Mr. Bell: Then what does it mean? He has used the very same words.

Mr. Emmink: It means that he is available for employment but no employment is available.

Mr. Bell: All right. So we have to pay particular attention to the phrase "which is available"; which is exactly what he says hereafter. Is that the only reason remaining for the board to decline to accept the recommendation of the Ombudsman?

Mr. Emmink: That is correct--making himself available for work which was not available.

Mr. Bell: Satisfaction of the phrase, "which is available." The board says nothing is available.

Mr. Emmink: That is right.

10:30 a.m.

Mr. Bell: All right. You heard what the Ombudsman has said in writing and through Ms. Catton and Mr. Goodman. They have said, frankly, that there is nothing on the board file and they have no information that any inquiry was made to determine whether there was any work available which would be suitable for this man's capabilities, other than employment opportunities within the realm of the practice of dentistry.

Mr. Emmink: That is right.

Mr. Bell: What do you have to say about that?

Mr. Emmink: When the complainant approached the vocational rehabilitation branch for assistance, he made it clear, and it was the board's judgement, that he was restricting his requests for assistance to work in the dental field, and part-time work at that.

The rehabilitation branch went over the efforts that he had made on his own over a period of some three years. I think Ms. Catton pointed out that he had been looking for work since 1976. When he approached the vocational rehabilitation branch in 1979, he still had not been successful in obtaining employment. It was for this reason the board concluded that after all of this effort, had there been work available, he would have secured it.



Mr. Bell: In the dentistry field.

Mr. Emmink: In the dentistry field, yes.

Mr. Bell: Had the board ever considered whether or not there was any work available to this person in any other field which is suitable to his capabilities?

Mr. Emmink: There might well have been except that the complainant did not express an interest in accepting employment in any other field. Their hands were tied. They said--and the complainant agreed--that if and when he should decide to broaden his scope, there might be something that the vocational rehabilitation branch could do to assist him. But until such time, there was absolutely nothing that they could offer him in terms of job placement that would fall in line with his interests for part-time work in the dental field.

Mr. Bell: All right.

Mr. Goodman: Mr. Chairman, before you proceed-- I do not mean to cut you off your line of inquiry, Mr. Bell, but I seriously wonder how Mr. Emmink can say that in view of the board's memorandum of August 24, 1979, the board vocational rehabilitation--

Mr. Bell: Mr. Goodman, we are indebted to you, but, please, in fairness I wanted to go through your chronology without interruption and I think, in fairness to the board, that they should not be interrupted either. I was going to get to that memorandum in any event.

Mr. Goodman: I just did not want Mr. Emmink to be placed in the position of saying something contrary to a written document.

Mr. Bell: I am sure he will not be. By the time we are all finished with him, he will be asked everything possible.

Before we get to that point and others, I just want to make sure the committee understands that when the board interprets this section and the very condition we have looked at, work which is available, I take it they do not only examine whether work is available in the context of the occupation the person carried on before the injury in question.

Mr. Emmink: In this case the board considered it in terms of the work that the man was looking for, and concluded that in that field there was not any work available.

Mr. Bell: Is that the criteria that the board applies to this condition--work which is available in the field in which the person is looking?

Mr. Emmink: Yes.

Mr. Bell: Does that mean that one seeking benefit under this section would be better off applying to the board and

informing the board that he is looking for employment in every sector of the work force?

Mr. Emmink: Probably. In this case you have a man who maintains that he is available for work in a certain sector. It may well be that there are all kinds of employment available to him in other sectors should he wish to broaden his search to include those sectors. But if he does not do that, then that work really, in all practical terms, is not available to him.

Mr. Bell: I am sure I am with you there, but in any event, the board leaves it to the applicant to determine the extent of the work force wherein the test of availability is to be made.

Mr. Emmink: The board cannot force a man to look for work in certain areas. We have to be guided by what the individual would like to return to work at. It is all well and good for us to give him advice. We can point out the unpracticalities of restricting a job search to a certain area, but that is all that we can do--advise the man.

Mr. Bell: How does the board then exercise its discretion, stated at the very end of the section which, "in the opinion of the board is suitable for his capabilities"? Do you do that within the sphere of the work force that he is looking for work in?

Mr. Emmink: This would have to mean work of which he is physically capable.

Mr. Bell: And within the sphere of the work force where he is looking. Let us use the details of this case. You have told us this gentleman, on your file, expressed a desire to work only in the field of dentistry.

Mr. Emmink: Right.

Mr. Bell: Therefore, no work is available, as you have concluded.

Mr. Emmink: That is right.

Mr. Bell: Let us assume that there were opportunities available for work. The board therefore would exercise its discretion in formulating an opinion as to the suitability for his capabilities--

Mr. Emmink: Yes.

Mr. Bell: --only from those positions available within dentistry.

Mr. Emmink: No. There could well have been positions available in some other field that were within his capabilities.

Mr. Bell: But the board would not pay any attention to



those because you do not worry about them if a person expresses a preference to work only in a particular area.

Mr. Emmink: I do not know if you can say we do not worry about them. We are concerned when an individual limits himself to a field where it seems very unlikely that he is going to be successful in finding work.

Mr. Bell: Mr. Goodman reminded us that on your file, as referenced in the Ombudsman's nineteenth--

Mr. Goodman: It is referenced in a case conference memorandum.

Mr. Bell: Referenced in a case conference memorandum which you do not have is an internal memorandum. This is document number four, members of the committee. It is on page four. It is a reference to a memorandum of a pension adjudication. I am not sure whether you can readily refer to it, but--

Mr. Emmink: Yes, I--

Mr. Bell: Do you have it?

Mr. Goodman: I am sorry, Mr. Bell. I was referring to a memorandum dated August 24, 1979, which is referenced on page two of document number 12.

Mr. Bell: I am just trying to get it straight in my mind.

Mr. Goodman: You will recall that Mr. Morand had asked the investigator, following the 19(3) response, to make further inquiries regarding the availability--

Mr. Bell: I will get to that later.

Mr. Goodman: All right.

Mr. Bell: Stay with me on this pension adjudicators memorandum, if you will. This is in July 1978, I presume, that this memorandum was prepared wherein it is stated, "This is a very peculiar case in that we have an individual who cannot return to his pre-accident work because of a compensable disability and who has no intention of retiring."

From that we know somebody in the board concluded that this person cannot return to the practice of dentistry.

Mr. Emmink: Yes.

Mr. Bell: "Were it not for the man's age, we would normally consider a temporary supplement. It is not really felt that we can discriminate because of age and, as absurd as the comment may seem following the interview today, it is felt by the pension adjudicator that this man is entitled to a temporary supplement, especially as were it not for the compensable condition, the man would still be working at this time."

That is awkward but I think the meaning is very clear. As far as the pension adjudicator is concerned, the sole criterion to disentitle him or not approve of periodical payment is the person's age.

Mr. Emmink: That would appear so.

Mr. Bell: Was that also the view expressed by Mr. Alexander, on behalf of the board, in July 1980? Are we really talking about age?

Mr. Emmink: No.

Mr. Bell: We are not.

Mr. Emmink: The board was of a different opinion.

10:40 a.m.

Mr. Bell: Subsequent to the Ombudsman's report, there was a meeting held between him and representatives of the board, probably yourself and Mr. O'Brien.

Mr. Emmink: Yes.

Mr. Bell: I asked Ms. Catton whether the detail of the memoranda, document numbers 12 and 11, were discussed at that meeting and, in particular, I would like you to tell us whether the following at page three of document 12 was discussed, Mr. Emmink. Maybe Mr. Goodman will let you follow along with their copy.

The author of this memorandum says: "I therefore submit to case conference the following. Blank had to ask for assistance. Blank stated that he would consider positions other than in the dentistry field. Neither assistance nor direction were offered to Blank. Consequently, it is inappropriate for the board to state that there was no employment available for him.

"It should also be noted by case conference that the board contemplates a change of occupation by an injured worker after a compensable accident. The board's present position does not consider any change of occupation as a possibility for Blank. It is applying a more stringent set of requirements by stating that, because there is no employment available to Blank in the dentistry related field, there is no work available to him. Obviously there are employment opportunities available to senior citizens."

Was that discussed at that meeting?

Mr. Emmink: I believe so, yes.

Mr. Bell: Did the board make any inquiries as to the position stated on behalf of the complainant that he was prepared to take work outside the field of dentistry?

Mr. Emmink: The board did not accept that he was prepared to do so.



Mr. Bell: What did the board base that finding on?

Mr. Emmink: Primarily on the basis of what transpired between the complainant and the rehabilitation personnel assigned to his case. "On June 6, the complainant stated that he had contacted many employment agencies to work with them in the field as a consultant, including the Workmen's Compensation Board. He also stated that he has requested special assistance in locating special full time or part-time work as a consultant in the field of assessment of dental practices."

On June 13, he was interviewed again and stated that, "Although he was basically seeking full-time employment, he will accept any type of employment that would be offered to him." He later contradicts himself on August 24. At that time he said that, "He again made it clear that he would consider only work of a part-time nature and that he was primarily interested in a position as a dental consultant."

Mr. Bell: Do you take that to be an inconsistent statement with the previous one, that he would take work from anywhere he can?

Mr. Emmink: Yes.

Mr. Goodman: Aside from that, you don't have these memoranda before you, Mr. Chairman. I am wondering whether he could go on to read the rest of the memorandum where he makes it clear that he would consider a clerical position.

Mr. Emmink: That is true. "He stated that he would consider other employment alternatives within reason. He did not, however, elaborate on this proviso. He was asked if he would accept a clerical position. He did state that he would consider it although not necessarily accept it."

Mr. Bell: What is the date of that memorandum?

Mr. Emmink: That was August 24, 1979. Here you have an individual saying, "I will consider it but I will not necessarily accept it."

If I can just continue for a moment with some of the other comments that are contained in the rehabilitation file that forms the basis for the board's conclusion, on July 23, he submitted a job search list. The job search list contained I think it was approximately 10 or 11 employers and all of these employers were related to dentistry or radiology, work of this nature. None of them had accepted him.

He also stated on July 23 that, "He was requesting the assistance of the vocational rehabilitation division in helping him find part-time employment as a dental consultant." He stated in a memo of August 8: "He had been conducting a job search and had approached insurance companies and hospitals for employment. However, he has been unsuccessful in securing employment to date." Then we come to the note of August 24 which we have gone through.

On October 8: "The problem was discussed with the complainant once again. It was pointed out that we would reconsider giving him assistance if he would willing to accept employment of a lesser nature."

Also there was the conversation with the pension's adjudicator, which has been referred to earlier. At that time, the complainant stated that, "He does not really feel that our rehabilitation branch can be of any assistance to him as he obviously will be restricting himself to modified work in the dental field only."

It was on the basis of all of this that the board concluded that this individual was really restricting himself to work in the dental field. He was not available on the employment market, work which might have been available to senior citizens generally.

Mr. Bell: Mr. Goodman, - Ms. Catton, this memorandum document 12 that I just read from, the very top of page four, after you recite the indication by the complainant that he is willing to take work really from any source. The statement is made, "Obviously, there are employment opportunities available to senior citizens."

What is that conclusion based upon? Is that a conclusion which relates specifically to this gentleman who, at the time of the writing of this memorandum, was 83 years of age, that there are employment opportunities available to him?

Mr. Goodman: The investigator felt that the board had conducted insufficient inquiries to deny this claimant solely because it concluded that there were no employment opportunities available for him.

Mr. Bell: I know, but he makes the statement that there obviously are employment opportunities available to senior citizens.

Mr. Goodman: It is not for the Ombudsmen to do the investigation that the board ought to do. The investigator was merely expressing the opinion that there are employment opportunities available. If you are asking whether there was an empirical study done by our office, no, that is not our function.

What he is saying is that the board has concluded that this man was not available for employment which is available. You don't even get to the "which in the opinion of the board is suitable for his capabilities" because the board, simply on the basis of certain statements in earlier vocational rehabilitation memoranda concluded that he was not available for employment which was available.

Quite frankly, I find it hard to understand why Mr. Emmink is now concentrating on the fact that he said that he would consider employment, although not necessarily accept it, when Mr. Emmink has already admitted that "accepts" is disjunctive with "available." So if the board offered him employment, "which in the opinion of the board is suitable for his capabilities," and he



refused to accept, the board would have been justified in denying him compensation.

He is arguing both sides now. He is arguing not only availability but failure to accept when, in fact, no employment opportunities were even made available to him. This is not a case where the board said: "Dr. Claimant, we have made extensive inquiries and are suggesting that there are employment opportunities available for you in fields other than dentistry. Here is one. Are you willing to accept it?" That did not happen in this case.

Mr. Emmink: It did not happen because the individual did not express any great interest in returning to other fields.

Mr. Goodman: Again, all I can do is refer you to the board's latest memorandum of August 24, 1979, which is referenced on pages two and three of that case conference memorandum, and these are direct quotes from that memorandum in which he made it clear that he would consider other employment opportunities, although not necessarily accept them. That is the most that he could say. There was nothing offered to him. He couldn't say, "Whatever you offer me, I am going to accept."

10:50 a.m.

Mr. Emmink: Again, all I can do is repeat the information given to the pensions adjudicator by the complainant to the effect that he will be restricting himself to modified work in the dental field only.

Mr. Goodman: When was that, Mr. Emmink?

Mr. Emmink: That was in 1978.

Mr. Goodman: And this was in August of 1979.

Mr. Cooke: The evidence that the Workmen's Compensation Board has given to us indicates that the job search that this individual carried out concentrated totally on the dental field. Is there any evidence, besides a statement that this fellow would consider other employment opportunities, is there any evidence that he was serious about that?

Mr. Emmink: Mr. Cooke, I have a list of the places of employment that are contained in this job search list. There is the Canadian Association of Radiologists, the Princess Margaret Hospital radiological research lab, the University of Toronto, the chief, Radiological Health Ontario, Dr. B. B. Hobbs, radiologist, the Ontario Medical Association radiation section, the Minister of Health, Mutual of Omaha, Imperial Life, Metropolitan Life, Occidental Life.

There is no indication whatsoever in any of the information we have that the complainant entered into a job search into fields in any capacity other than that related to radiology or dentistry.

Mr. Goodman: One further one is the Workmen's

Compensation Board. He also asked whether there was a position at the board.

Mr. Bell: He also applied to insurance companies. I think you might be presuming a little bit to say that he applied to somewhere--

Mr. Emmink: I don't know that we are presuming too much when you are talking about a dentist with 65 years of experience applying to insurance company. I don't think it would be as a clerk or an adjuster. I think it would have to be reasonably assumed that it was in some field related to dentistry.

Mr. Bell: I suggest to you that he was exactly applying for a job as an adjuster because he was going to adjust claims for payment under the appropriate dental insurance plan. I don't consider that the practice of dentistry because he--

Mr. O'Brien: We haven't said the practice of dentistry.

Mr. Bell: I don't consider that a dentistry related field. I don't consider that an adjuster at Imperial Life all of a sudden can say that she has been working in the dentistry field because she processes applications for payment.

Mr. Emmink: I think they would have to be claims related primarily to dental work. However, we don't have the specifics so I don't think that either one of us is in a position to come to any conclusion.

Mr. Chairman: It's a question of the terms of how you dealt with this chap, the terms of assistance and advice and looking in the other fields and that sort of thing. We are talking about a man who was close to 80 years of age.

Mr. Emmink: That's right.

Mr. Chairman: Would you have treated it any differently if you were dealing with someone, say, around 55 or 50 years of age? Would there have been more assistance in terms of looking at other fields?

Mr. Emmink: The rehabilitation programs that we have are out of necessity geared to the majority of the work force.

Mr. Chairman: Could you speak a little louder, please? I am having difficulty.

Mr. Emmink: The rehabilitation programs that we have are geared to assist the great majority of the injured workers that we find ourselves dealing with. We don't have too many 81 year old ex-dentists. In fact, I don't think we have another one.

The programs we do have are simply not suitable for someone of this background. We have training on the job. We have work assessments at places like Costi and we have job placement programs. The training on the job--first you would have to find what kind of a job we could place this man into to train him on.



In view of the fact that he expressed an interest in remaining in the dental field, that was set aside.

The same occurred with job placement. You can try to place an individual in work that he is capable of in many different fields, but if he restricts that field to dentistry or work related to dentistry, and if you add on top of that the difficulty because of the reluctance that even the complainant admits to created by his age, it becomes exceedingly difficult to try and do anything.

Mr. Chairman: You are saying that you would have treated the situation in a similar manner if he was 55.

Mr. Emmink: Yes, excepting, of course, that there are practical difficulties created by the fact that this man is after all 81 years old.

Mr. Bell: I am sorry to interrupt but I thought the practical difficulties lay in the first two conditions, the co-operation in and available for a medical or vocational rehabilitation program. That is age-related, I think we all identified that earlier, but we no longer have to worry about those two factors because the board has accepted compliance with them.

Mr. Emmink: There is no problem with the age as far as the board is concerned. There is a problem in terms of prospective employers and of course the board cannot do anything about that.

Mr. Chairman: I guess what I am trying to get at is the approach that the board took in terms of assisting this man.

Mr. Emmink: The board explained to him what was available, we have this and this and this, and was met with a response something like--this is conjecture but it would have been something like, "What do you have that can put me back to work in the field of dentistry?" We responded by saying, "What have you tried?" and when it was explained to us what he had tried to do over a period of three years we concluded that was much the same as we would have done.

Mr. Chairman: If you have a person in a situation like this, and I think Ms. Catton mentioned it in one of her reports or one of her investigators did, about going out and providing them with assistance in terms of: "There is a job in this field that is available now and we can set up an appointment for you. Would you be interested in going down and having an interview?" Do you do that sort of thing normally?

Mr. Emmink: Yes.

Mr. Chairman: Did you ever offer that kind of thing to this individual? You mentioned in one of your reports that he would consider a clerk's job. Would you try to find something for him.

Mr. Emmink: We said that we would do that if he were interested.

Mr. Chairman: But he did express an interest in considering a clerk's job.

Mr. Emmink: The board came to the conclusion that, in spite of what may have been said there, he was interested only in part-time work in the dental field.

Mr. Chairman: I think he said "primarily interested."

Mr. Emmink: Yes.

Mr. Goodman: You will recall that is precisely the decision that the Ombudsman found to be unreasonable on the basis of the same memoranda that were before the Ombudsman, because of course we have the entire file.

Mr. Shymko: With reference to the letter from the Ombudsman's office of June 5, 1980, you will find the last sentence says, "The board should consider the other employment opportunities."

I refer back to what the chairman remarked. Could the board's job placement people offer him a job; in other words, in your consideration that there may be some employment opportunity for which probably he would qualify which may not be limited to the dentistry area, for which he has apparently stated his preference, but for which in the opinion of the board he would qualify and would be capable of doing, could you give him an offer and then perhaps test him? If he accepts it, fine, it solves it. If he refuses it, then you have got your case pretty well strengthened in answer to the Ombudsman's request that he should consider other employment opportunities.

In other words, my understanding that the Ombudsman's request that the board should consider other employment opportunities simply means that your job placement people should go out there, find some kind of a job, ask him whether he would take it if the job was available, and if he refuses it then your case is solved.

Mr. Emmink: Do you mean, Mr. Shymko, should we now do this at this point in time?

Mr. Shymko: I would think this probably would be the closest solution to resolving the problem of whether he adamantly is limiting himself and you are right in your arguments, or whether or not you should give him another opportunity and maybe he would be willing to follow this procedure to take some kind of a job.

Mr. Emmink: All that I can say is that the rehabilitation file was closed with the mutual agreement of both the complainant and the rehabilitation personnel. If at any time the complainant feels that the board could be of assistance to him, if he would like us to try to place him in some other line of



work, we would be happy to try to assist him in any way we could.

Mr. Shymko: In other words, you could reopen your rehabilitation file and continue to seek some kind of employment for him.

Mr. Emmink: Certainly.

11 a.m.

Mr. Shymko: Does this mean that the request has to come from him? On the basis of the memorandum from the Ombudsman's office, and the request or the suggestion the Ombudsman has made that he should consider other employment opportunities, would it not be acceptable for you to take that first step?

Mr. Emmink: We could take the initiative, certainly.

Mr. Philip: Does this usually happen, because my experience is that you are treating this gentleman in the same way that you treat 55 year olds? Tell them to go out then and find their own jobs, and when they do not do it then they are punished for it.

Mr. Emmink: No. In this case, that did not happen.

Mr. O'Brien: I would like to interrupt for a moment. That is not correct. The board does not generally do what you have just said it does. They make every effort to try to find opportunities for the person who has been injured to find employment.

Mr. Cooke: The basic responsibility is usually put on the claimant.

Mr. O'Brien: We do not always succeed, but we try.

Mr. Cooke: The basic responsibility in rehab to find work is usually put on the claimant.

Mr. Emmink: Certainly, we encourage them to go out there and look. I cannot see that anything ominous or detrimental can be construed by that.

Mr. Cooke: What I am saying is that the rehab--I have never defined rehab in the same way that the Workmen's Compensation Board has but that discussion takes place at the annual debate on the Workmen's Compensation Board annual report here in the Legislature and not in the Ombudsman's committee.

Mr. O'Brien: I have some difficulty with the expression that is being used here relevant to offering employment. The board cannot offer employment. The board can offer opportunities for employment.

Mr. Chairman: I would like to direct one question to the Ombudsman.

Mr. Goodman: Mr. Chairman, before you do, and I will be pleased to certainly try to answer it, I am trying to understand where we are going. I thought Mr. Emmink admitted that the claimant was available for employment; that the only issue raised was whether there is employment which was available. We seem to be focusing our inquiries now on whether he was available for employment. I thought that was admitted.

Mr. Chairman: Okay, let us concentrate on the availability of work. I agree with you. That is one I want to pursue.

On the case conference memorandum number 12, in the statement by the investigator, obviously there are employment opportunities available to senior citizens. I would like to pursue that a little more. Just how did the investigator arrive at that conclusion that obviously, there are opportunities available for an individual 80 years of age?

Ms. Catton: There was not a scientific study or job research project on it. The investigator did review the want ads in the three Toronto papers for a couple of days; found some ads for some employment for senior citizens.

Mr. Chairman: Now senior citizens is someone what, 65 years of age and older?

Ms. Catton: The ads specifically said employment for senior citizens.

Mr. Chairman: We are talking in this particular case about a gentleman who is 80 years of age, though.

Mr. Goodman: Well, he was 79 when--I believe he was 79. I do not mean to quibble but I just want to get the facts straight.

Mr. Chairman: I think you were saying obviously there are opportunities--speaking about this specific individual really, we have to relate it to him--that obviously there are opportunities available for a 79 year old man in the work force. That is what the investigator is saying, is it not?

Ms. Catton: That is right.

Mr. Chairman: I would like to hear a little bit more about the justification for that conclusion.

Ms. Catton: There was some discussion in the office. One person's father who is 85 years old was employed with an advertising agency; there is Mr. Justice Hall, and--

Mr. Goodman: And Mr. Justice McRuer. I agree that perhaps it was an--

Mr. Chairman: An overstatement?

Mr. Goodman: --unscientific conclusion. I do not know whether you would consider it an overstatement but the point is,



and I tried to make this clear earlier, that the issue is not whether the Ombudsman can determine that on the basis of an investigation conducted by him whether there are employment opportunities available, but whether the board conducted sufficient inquiries.

To deny a person prima facie entitled, because they agree that their impairment to earning capacity was greater than usual, solely because there was no work available, did the board conduct sufficient inquiries to be able to make that determination? The Ombudsman said no, and that is exactly what was unreasonable.

Mr. Emmink: I would have to submit, did the Ombudsman make sufficient inquiries to come to that conclusion? He came to the conclusion that there was work available to senior citizens such as the complainant.

Mr. Goodman: No, let us be clear. The Ombudsman determined that on the basis of the evidence before the board, namely, the very memorandum that we have been referring to, that the board was unreasonable in concluding that this claimant was not available for employment which was available.

Mr. Bell: He is available for employment. We only have one remaining issue now, whether there was work available.

Mr. Goodman: I agree.

Mr. Bell: You guys are playing tennis right now, except what happens if in fact there is no work available? What happens in fact if there is work available? This group has got to make some decision.

Mr. Goodman: If the board had--given that this person indicated that he was willing to consider clerical positions and other positions--although not necessarily accept it, to be fair--if the board had made inquiries other than the job search list provided by the claimant and satisfied itself on the basis of those kind of inquiries, that in fact there were no employment opportunities available for a person with these capabilities. Then the Ombudsman would not have found that the board's decision was unreasonable, but it didn't do that. It confined itself to saying that first of all this man concentrated on the dental field when in fact the vocational rehabilitation memoranda indicate that he was willing to consider other things.

Mr. Bell: I think you are doing a little more than just that, because you have asked in the recommendation that the periodical payment be made.

Mr. Goodman: That is right.

Mr. Bell: That presumes that there is work available. So it is not whether or not they undertook an appropriate investigation of availability of work, it is whether or not work is available.

Mr. Goodman: No, I can explain why that recommendation was available.

Mr. Cooke: Was available.

Mr. Bell: Right, was available.

Mr. Goodman: Well, that is important. That is precisely why the Ombudsman said that the supplement should be granted.

Again, prima facie, this man is entitled to a temporary supplement. It is only in the event that the board can show that he is not available for work which is available in this particular instance that they can then say, "No, you are not going to get it." They haven't made those inquiries yet.

Mr. Bell: All right.

Mr. Goodman: So he would receive until such time as the board conducts those inquiries and satisfies itself, no there is no work available, and then in the event that--

Mr. Bell: You interpret that section differently than the board does. You are saying that where the first two conditions are met, the person from that moment receives benefit unless and until somebody else determines down the road here that any of these necessary further conditions are not met. The board does not say that. The board says: "We want all of the conditions satisfied from the beginning and then the benefits will flow."

Mr. Goodman: Oh, no, no. I am not suggesting if the determination is made at the outset that he has left the country for instance and he is not making himself available for work that they should nevertheless give him a supplement.

You will note the scheme of the section is that a person is entitled "provided that." So we have to satisfy those conditions.

But prima facie otherwise he is entitled. Unless the board can show that he has failed to satisfy those provisos, he is entitled. The board has said in this case that there is no question that this man's earning capacity is impaired greater than usual for the nature and degree of the injury because he cannot practice dentistry, notwithstanding that the injury is only to his hands.

Mr. Bell: Can I try something?

Mr. Emmink, Mr. Alexander's letter; the second page, that paragraph we have been reading from. He says: "The board cannot accept that legislation intended to provide its supplementary benefits in cases where there is absolutely no indication that suitable work will become available. Such benefits in the opinion of the board, were intended to--"and here I take it he is speaking to one of the ways in which section 42(5) is used by the board--"to assist an injured employee temporarily during a period of financial hardship while the injured employee was actively engaged in looking for work which was available, but which the



injured employee had not yet been able to secure."

Is that a fair statement of one of the ways in which the board uses section 42(5)? It's not the only way the board uses section 42(5), from what we heard previously.

Mr. Emmink: No, it is also used while a man is for instance attending a rehabilitation program.

Mr. Bell: Well I think we also heard that it is used in other ways to provide an indefinite payment in some circumstances where the board considers it is appropriate.

Mr. Emmink: I think that was stated.

Mr. Bell: Okay, I don't want to bog down on that point, just other than to establish there is more than one use for section 42(5).

I take it that implicit in that statement is the board does not require that the employment which must be available is not a specific job for the person seeking employment. Do you follow me?

11:10 a.m.

Mr. Emmink: No. What do you mean by a specific job?

Mr. Bell: When you read the act you could interpret it very narrowly as requiring a person available for employment to a specific job before entitlement to periodical payment.

Mr. Emmink: I don't think we would interpret it that narrowly.

Mr. Bell: I suggest you don't, because Mr. Alexander says, "actively engaged in looking for work which was available but which the employee had not been able to secure."

Mr. Emmink: Right.

Mr. Bell: He is only contemplating somebody actively seeking a position in the work force which, in the totality of the work force, is available.

Mr. Emmink: That is correct. It is the totality of the work force.

Mr. Bell: Or the totality of the narrow sphere of the work force, dentistry for example.

Mr. Emmink: Yes.

Mr. Bell: He is not suggesting that this person must ultimately obtain one of those employment opportunities, recognizing that there will be numerous people competing for one position.

Mr. Emmink: He has to be available for work of which he is capable.

Mr. Bell: Which is available.

Mr. Emmink: Which is within his capability.

Mr. Bell: It doesn't say that he must be the successful applicant for that position, does it?

Mr. Emmink: No.

Mr. Bell: Recognizing that there will be a lot of people competing for one position and as Mr. Alexander put it, we are helping the guy out while he is looking. We only intend to help him out until he gets something.

Mr. Emmink: Right, but we are not going to supplement a person in what looks like a futile effort.

Mr. Bell: Indefinitely, all right. May I suggest to you that if the board has been prepared to supplement somebody while he is looking for work which is available until he gets that work, it would be just as reasonable to supplement somebody who is looking for work until such time as it becomes apparent that that person cannot obtain employment?

Mr. Emmink: Certainly, and by the time the decision was reached in this case that had already become apparent. He had been looking since 1976.

Mr. Bell: But the board would agree there could very well have been a period of time from termination of full-time employment, when this man was forced to quit work because of the dermatitis problem, until such time as it became apparent to everybody, if not him, that he just wasn't going to get work, and during that period of time, as I understand the stated philosophy of 42(5) in this particular, the board could very well have given this man some supplemental assistance.

Mr. Emmink: I think that all I can say, Mr. Bell, is that there would have been some period of time during which, had the matter been considered, he would not have been able to conclude that no work was available.

Mr. Bell: Who would not?

Mr. Emmink: Whoever was considering the question.

Mr. Bell: That decision would be for the board, I take it.

Mr. Emmink: Let me put it this way: The man quit work in April 1976. In May 1976 had the board been asked to decide whether or not there was work available to this man, it would not have been able to come to the conclusion that there was no work available.



Mr. Bell: (Inaudible) May 1976, June 1976? I suggest to you--and I think we had better face the reality of age in this case--that after 1976 there came a point prior to today where by any objective standard the reasonable conclusion would be that there is no work available for that person.

Mr. Emmink: That is right.

Mr. Bell: But I am suggesting that was a period after he was required to terminate his usual occupation, that of a dentist. I don't know when it is, quite frankly, and we are not going to find out in this committee because we don't rehash or reinvestigate, but I suggest to you that there is probably on your file and in some combination with the Ombudsman's file, a period of time that can be identified. Maybe it is the time when he flooded the market with job applications and came up empty.

Mr. Emmink: I think I know where you are leading, Mr. Bell. You are suggesting we might consider the retroactive application of benefits under section 42(5).

Mr. Bell: Are you going to hit me with retroactivity--it is not available?

Mr. Emmink: We can't consider the question of section 42(5) until such time as we establish that there is a permanent disability.

Mr. Bell: You have already accepted that.

Mr. Emmink: Yes, in 1979.

Mr. Bell: Right.

Mr. Emmink: All right. So, if you are leading to a suggestion that we might consider a supplementary benefit at some time prior to the time the man was awarded a permanent disability pension, I do not think we can do that.

Mr. Goodman: No. I do not think that is being suggested. The original appeal board decision was July 1977 denying 42(5) benefits.

Mr. Bell: No but when was the first determination of permanent disability made?

Mr. Emmink: That was made in April 197--no, pardon me; that was in the--yes, April 1978, I believe.

Mr. Bell: That is right. April 1978. Does that finding relate back to an earlier period of time?

Mr. Goodman: Yes, it did. It was made retroactive.

Mr. Emmink: The pension was paid retroactively to the time that he stopped working.

Mr. Bell: To be consistent with 42(1), if you make a

permanent disability benefit retroactive, you are also making the fact of disability retroactive, are you not?

Mr. O'Brien: I do not think we can deny that. The pension was--

Mr. Bell: It is called sucking and blowing if you do.

Mr. O'Brien: Pension was made effective from March 20, 1976, when he stopped work.

Mr. Bell: All right.

Mr. Goodman: While Mr. Emmink is seeking the answer to that question, you will recall that yesterday counsel asked me, "Mr. Goodman, are you suggesting that the board compensate a person like this for life?" I gave the answer "no."

The reason for that is that the Ombudsman only found this decision unreasonable--and I am reiterating--because in the Ombudsman's view, the board had not conducted sufficient inquiries to determine that there was no employment available suitable for his capabilities. In the event the board conducts a sufficient investigation and says, "We are now satisfied on the basis of this evidence before us that there is just is no work available," the Ombudsman would be hard pressed to find that decision unreasonable.

That is why the Ombudsman did not give a time period. He simply said: "Give the man a temporary supplementary award. It is up to the board to determine the time period."

Mr. Chairman: Mr. Cooke.

Mr. Cooke: I will wait until Mr. Emmink comes back to us.

Mr. Bell: Can I jump in then? Mr. O'Brien, with all your 21 years' experience, are you aware of any circumstances wherein a 42(5) benefit was conferred on a person who was actively seeking employment, available for employment, in a work force or wherein employment was available, but was unable subsequently to ever obtain employment and thereafter had the 42(5) benefits terminated?

Mr. O'Brien: Oh, yes. Sure.

Mr. Bell: It happens all the time. Do you agree with me that it is the converse of the situation that Mr. Alexander refers to, where you temporarily assist somebody until he gets back in.

Mr. O'Brien: Right.

Mr. Bell: You also temporarily assist somebody--

Mr. O'Brien: In the hope that he gets back in.

Mr. Bell: --in the hope that he gets back in, until such time it becomes apparent that he cannot get back in.



Mr. O'Brien: Right.

Mr. Bell: Would you agree with me that that is the situation that we are dealing with with this man?

Mr. O'Brien: I really do not.

Mr. Bell: Two out of three ain't bad.

Mr. O'Brien: I did not particularly intend to get involved in this. There are some aspects of this that concern Larry O'Brien.

We are dealing here with what is actually a reasonable application of a discretionary judgement on the part of the board. The kind of thing which suggests that the board does not make any general investigation of work availability.

The rehabilitation department is involved constantly in the process of trying to find work availability for any pensioner who may have trouble getting back to work. Their knowledge and experience relative to the availability of work for a man of 55, 65 or 75 is a very general knowledge that they have in relation to any applicant. So when they come to deal with a particular case, they have the background of experience of knowing what kind of work may be available for that particular man under any particular circumstances.

I want to express the opinion again about opportunity for employment, because this opportunity can be very diminished by the man's own motivation and his own requirements. But this decision of the board, relative to this doctor, was a finding that in their discretion they felt that it was unreasonable to conclude that work was available for this 77-year-old dentist.

They have unfettered their discretion; they have looked at all the facts; they considered all the elements and they made a judgement that it was unreasonable to use all the facilities of the board to provide the kind of support for this particular man that he wanted, because it does not meet what I would refer to as the equity of the situation.

11:20 a.m.

I allowed that man's claim on the basis of aggravation and I felt that he had full entitlement to some kind of a pension award relative to that disability because the aggravation had caused at that particular time the termination of his profession. But to suggest that that section of the act should require the board to support by way of supplement, when we have so many other people who may be available for the very kind of job that he might possibly want to occupy, and we have a lot less jobs available than we have rehabilitated people we want to put back to work--it is just the reasonableness of the situation that I am suggesting to this committee they should look at; what is reasonable under this set of circumstances relative to that discretion which the board exercised, and it is a discretion.

Mr. Cooke: This is obviously a very difficult case but in my four or five years as an MPP I have dealt with a number of cases of 62 or 63-year-old individuals with a permanent disability who have been on a supplement, but always we have arranged some kind of a rehab program where there would be a job search carried out. There has always been a general agreement that at age 65 it was the understanding that the supplementary would be cut off, of course, and they would then be collecting old age pension, CPP and the rest of the things.

There is a retirement issue involved in this too and I think that is what Mr. O'Brien is getting at, and that is what the committee is going to have to come to grips with. I am not sure that the Ombudsman has come to grips with it.

At some point are we then saying if we go along with the Ombudsman's recommendation on this case, that the cases that I have dealt with and I am sure new MPPs, if they have not dealt with them, will deal with them, and the rest of us and others who have been around longer than I have have dealt with them many times, are we then saying that those individuals I have dealt with, no longer should we look at their supplementary ending at age 65, that we should be looking at them going on to 66, 67, 75, 77, whatever the age is, as long as they continue to carry out a job search?

If that is the case, then there are really significant ramifications from the decision this committee makes, if it was implemented.

Mr. Goodman: Mr. Cooke, given Mr. Alexander's last letter, we did not consider age to be the issue, notwithstanding the fact that you will notice there was liberal reference to it in the meeting that preceded the reply. If the board is taking the position that no supplement will be awarded to someone over 65, then I would suggest it is feathering its discretion. I did not think the board was suggesting that. What they are saying in this case, in my view and in the Ombudsman's view, the board has to look at each case individually.

They have to look at the individual. If they were looking at Mr. Justice Emmett Hall they would say, "Certainly there is work available for somebody with his capabilities." If they were looking at a dentist who has practised in the field since 1920 and is willing to take a clerical position, they have to take a look at what work is available for that person with those specific capabilities.

It is precisely that decision that the Ombudsman found unreasonable, given the evidence before the board. The Ombudsman was satisfied that on the evidence before the board in considering this particular man, the board unreasonably concluded that there was no work available for him.

I do not think you have to deal with the age issue because it is not the crucial issue joined following the 22(3) report. The crucial issue is the availability of work for this person--that is important, for this person.



Mr. Shymko: I would like to question representatives of the board with reference to the fact that if the age factor plays a part, I would understand this man has been paying premiums to the board after 65; in other words, compared to the others, what is interesting here is that he turns 65 and then he applies for personal coverage from the Workmen's Compensation Board. Why? Because he can no longer be eligible for any coverage from private income loss insurance plans. So he applies to the Workmen's Compensation Board because this coverage is not available any more from other plans. The board agrees to provide him with that coverage.

Mr. Emmink: Yes.

Mr. Shymko: Do you do this very often for those who have turned 65, to whom coverage is not available; is this an exception to the case, or is this a norm?

Mr. Emmink: I am not aware of anything that would preclude someone from obtaining personal coverage simply on the basis of his age. If the man is continuing in self-employment, I do not care how old he is; he is entitled to the coverage extended by the act.

Mr. Shymko: So the age factor is irrelevant. The man has been paying premiums and is entitled to all the assistance from--

Mr. Emmink: The only relevance of the age factor is in terms of the difficulties in job placement, and that is a difficulty that is presented by prospective employers.

Mr. Shymko: But normally, if you do provide that coverage for a person who is 65 and who will be paying premiums for the next 10, 15 or 20 years, obviously if a problem occurs such as in this particular case, he is faced with a double problem. The age factor comes in then in terms of finding employment. It is a catch-22 situation almost.

Mr. Cooke: He is still covered. I agree with what the Ombudsman's office said in response to my question. But he would pay premiums to be covered, not only by the possibility under section 40 of the supplement, but he would be getting a pension. He is getting a disability pension.

Mr. G. I. Miller: Did this man receive a supplement?

Mr. O'Brien: He received 10 per cent, which amounted at the time it was awarded to some \$50-odd a month. It is now, by escalation, somewhere around \$60; and he will receive that for the rest of his life.

Mr. Shymko: Was there a retroactive payment?

Mr. Emmink: Yes. He received \$1,700-odd in arrears when the pension was awarded.

Mr. Shymko: But if he were to get the supplement, while it is hard to say how much, on the average, what would the amount be?

Mr. Emmink: It would be an amount that would make up the difference between the pension award that is paid to him and 75 per cent of his average earnings, or in this case the amount for which he was personally covered, less any income from other sources.

Mr. Shymko: Which would approximately be what?

Mr. Emmink: I really do not have a clue.

Mr. O'Brien: I think it would amount to some \$4,000 a year. Mind you, he only has \$7,500 a year coverage--

Mr. Shymko: Which is a little less than \$400 extra a month, so it represents a substantial income.

Mr. Emmink: It depends on what other income he has. It might be diminished by his old age pension.

Mr. G. I. Miller: Is that usual, that his pension is payable after 65?

Mr. Emmink: Payable for life.

Mr. G. I. Miller: Any percentage basis payable for life?

Mr. Emmink: Yes.

Mr. O'Brien: There is another point that I find rather interesting. This man stopped his practice on the advice of doctors on March 20, 1976. As Mr. Cooke has indicated, one of the things that is expected of a pensioner under these circumstances is to make every effort he possibly can to find employment on his own as well as the assistance he may get from rehabilitation.

This doctor went to Manpower on March 20, 1978; that was the first time he sought any assistance outside of the board. It has some significance to me that he waited approximately two years before he looked for any other kind of a general market assistance.

Mr. Chairman: Any further questions?

11:30 a.m.

Mr. Cooke: I would be interested to know the Ombudsman's response to that, because while I do not agree with some of the criteria the rehab department uses to judge whether a person is adequately looking for employment, those criteria are applied across the board, and I do not think we can make an exception in this individual's case, if this individual is not looking for work outside of the dentistry field.

There has really been no good evidence proven, other than a statement that he would consider other employment. Most of the jobs, even the ones with the insurance company, which we cannot prove either way, but we can assume from the other jobs that they were probably looking for something that had some relation to the dentistry field.



Mr. Goodman: Considering that the man had practised in the dentistry field since 1920 that is not unusual. That was his specialty.

Mr. Cooke: There was nothing available in that field, and that is the reason that the Workmen's Compensation Board came to the conclusion that there was not work available for him.

Mr. Goodman: As I understand it, you are defining field very narrowly. I do not believe the board defines it that narrowly. He was not looking to be a practising dentist. He was looking--

Mr. Cooke: I am not talking about that.

Mr. Goodman: I realize that. He was looking to utilize the skills and the experience that he had gained in a dental related occupation; be it a clerk, be it a consultant, be it an adviser, be it a lecturer, these were all things that he looked at. He looked at community colleges; he looked at insurance companies. He was not restrictive at all in his job search.

Mr. Philip: In dealing with similar cases like this that have come to my office, one of the first things the client tells me is that invariably, in addition to going to the WCB and talking to the rehab counsellor and perhaps being sent on job searches, he has also gone to Canada Manpower; and to take two years to go to Canada Manpower, I think certainly has some bearing on his case, as to whether or not he has done a thorough job search.

One would think that would be one of the first places he would go. He might go to the professional section of it, and he may not be looking for a job as a night watchman, or something like that, initially.

Mr. Goodman: First of all, let us be clear that although co-operation is a requirement under the first condition it is not under the second condition. The board denied a temporary supplement, we have heard, solely because there was no work available; not because he failed to co-operate. They have acknowledged that he has co-operated. So, with the greatest of respect, I believe we are putting up a straw man only to knock it down.

We will try to obtain the answer for you, whether he did make inquiries before that, but that is not relevant with respect to the issue before the committee, which is limited, as your counsel has said, to three words, "which is available."

Mr. Cooke: I have skilled tradesmen come into my office who are on workmen's compensation, and they are restricted, in many cases, to being a night watchman because they have had a back problem or something like that. Now, am I going to say to that individual he is a skilled tradesman, he used to work in a factory, he can take that kind of a job, but this fellow is a dentist, that is not something that he has to consider?

Mr. Goodman: No, absolutely not. That is precisely the

point that the investigator was attempting to make in the case conference summary, and perhaps overstating it; that there were employment opportunities available other than in the strict dentistry related fields to senior citizens. I know that one consideration of the investigator, although not stated but discussed with Ms. Catton, is that our assistant director of legal services is either 70 or 71 and did not come to our office until he had retired from the active practice of law. We all know examples.

Perhaps it was a bald statement without specifying the data which he relied on, but we do know that there are employment opportunities available to capable senior citizens in fields other than their specific field of expertise. It would be unrealistic to expect a welder who is unable to weld to go back to welding, and the board does not require that.

Mr. O'Brien: I do not want to introduce a moment of levity into this, but I find it interesting to see that all these references to senior citizens who have been able to get employment seem to be limited to the legal profession.

Mr. Bell: We look after our own.

Mr. Chairman: We have an example in the room today that it just does not apply to the legal profession. Is that correct, Larry?

Mr. O'Brien: Yes. Yes and no.

Mr. Goodman: Mr. O'Brien is a lawyer as well. So there is the answer.

Mr. Chairman: Anything further? Then that concludes that case then until we deliberate on it tomorrow. Apparently we are not going to require the presence of the board personnel any further. I think Mr. Goodman has something to say at this point.

Mr. Goodman: Mr. Chairman, thank you very much. Mr. Morand has asked me to read the following message:

"On behalf of myself and my colleagues at the office of the Ombudsman I wish to extend to Larry O'Brien every wish for success upon the occasion of his upcoming retirement. Larry's term as Ombudsman liaison officer has seen significant improvements in the relationship between the office of the Ombudsman and the Workmen's Compensation Board.

"This amelioration is in large measure due to the efforts of Mr. O'Brien. His candour and unfailing good humour will be missed by me and those of my office who have had the pleasure of dealing with Larry. We look forward to continuing our good relations with Larry's successor, Andy Emmink.

"We wish you good health and happiness, Larry, and thank you most sincerely for your contribution in assisting to ensure that the board remain sensitive to the humane concerns of the workers and employers of this province that have dealings with both the



board and the office of the Ombudsman. We extend to you the benefit of doubt and believe, knowing you as we do, that you will enjoy a fulfilling retirement.

"Donald R. Morand, Ombudsman."

Mr. Bell: Mr. Chairman, I always get my last two cents in. I just wish to support that and identify with it. Believe me, the function of the Ombudsman and the select committee, I think, is demonstrated at its best and at its highest level when it deals with Workmen's Compensation Board matters. A significant contribution to that has been Mr. O'Brien and his staff.

He has been very full, fair and frank, sometimes I am sure to the chagrin of others at the board, but nevertheless he has had the courage to identify things as they appear to others. He is to be commended for that, and I know that he is going to enjoy a very active life in whatever he does thereafter. I won't call it retirement; I will call it change of occupation in some other work field. Thank you, from myself.

Mr. O'Brien: Thanks to you, Mr. Bell and Mr. Goodman, and to Donald Morand. I do want to say that the relationships that have developed between the committee, the Ombudsman and the board have been relationships that have, if you like, developed over the years. For the part that I have played in that, I accept the compliments that have been given to me.

But I would like to point out very strongly that they have been developed under the auspices of the institution itself, the board. In those general kinds of developments, Mr. Starr and more latterly, Mr. Alexander, have played a very significant part. I really think it is fair to say that Bill Reed too, as vice-chairman of appeals, played a very significant part in that development.

This relationship has really blossomed under our present vice-chairman of appeals, Tom Warrington. I think it should be pointed out to this committee that Tom has played a very significant part in the kind of relationships that do at this particular time exist, so that, as Mr. Morand said in his report, the compensation board and the Ombudsman's office have reached a level of--as I think he referred to it--mutual understanding and co-ordination.

For whatever part I have played, I appreciate the compliments, but I would like to say there is not any reason to suggest for a moment that this relationship will not continue to develop and perhaps improve even more.

11:40 a.m.

Mr. Chairman: Larry, this is a new committee and we have not dealt with you prior to this, with the exception of Gord, but we appreciate your being here and your assistance in the past couple of days along with the other members of the board staff. On behalf of the board we wish you well in the future. As the Ombudsman has said, there are obviously lots of opportunities for

senior citizens so we wish you well, especially in looking for a new job.

Mr. O'Brien: I have a bit of a disposition to explore that with the Ombudsman.

Mr. Chairman: Thank you very much.

Mr. Goodman: There is one further case that I think the select committee might have looked at.

Mr. Bell: If you are talking about the one I am thinking of in the eighth report, I am going to do that in another way.

Mr. Goodman: In another way?

Mr. Bell: Yes. I do not think it is appropriate now to get into that case. It can be done through Mr. Emmink. Or do you want to do it now?

All right. Mr. Emmink, just so we can close the record for the Workmen's Compensation Board once and for all, at pages 11 and 12 of the committee's eighth report it makes reference to complaint number 38 of the Ombudsman's sixth report, and recommendation 13 in its seventh report. It is a short text.

Recommendation 13 in the committee's seventh report effectively required the Workmen's Compensation Board to reverse a previous decision, and during its usual procedures, it did so by a rehearing. I think the issue of benefit of the doubt was implicit in the recommendation.

When the committee met last July that rehearing had not taken place. The committee received, subsequent to its hearings in public, the decision which the committee considered when it deliberated on its report. At page 12--we will have copies of that decision for you, which may or may not be necessary as you see fit--the committee said the following:

"The committee has grave reservations that the appeal board panel in this matter considered the application of the policy of benefit of the doubt as intended by the committee and as articulated by the corporate board policy itself. It is apparent to the committee on the face of the board's decision that the appeal board panel took extraordinary steps to avoid applying the policy of benefit of the doubt. It made findings of credibility against the complainant and his wife and resorted to the Canadian Medical Directory, twenty-fifth annual edition, to assist it in assessing which psychiatric opinion it preferred.

"The appeal board panel may have inadvertently cast itself in the role of an adversary vis-à-vis the complainant and his wife and vis-à-vis the psychiatrists in question. After those issues are fully discussed and explained to the committee it will report to the Legislature within the appropriate recommendation.

"One might take from the appeal board's comments on pages four and five of its decision that the applicability of the policy



of benefit of the doubt was determined by the content of the two psychiatrists' expertise, qualifications and experience as recorded by the Canadian Medical Directory. If that be so then the committee is concerned that the appeal board panel may have acted beyond the scope and intent of the policy and the act itself."

Essentially--without getting into the details of the injury or compensation requested--the appeal board in the decision preferred not to accept the evidence of the complainant and his wife. It made a finding of credibility and it also chose not to accept the opinion of the psychiatrist relied upon by the Ombudsman in his report. It preferred to accept the opinion of a psychiatrist retained through the board. On the face of the decision they reasoned that the board's psychiatrist's opinion was preferred because he apparently ranks senior in experience and qualifications in the Canadian Medical Directory.

With that, Mr. Emmink, do you have any comments to the board and to the committee?

Mr. Emmink: Yes. I think it is unfortunate that the emphasis was placed on what was added to this decision almost as an afterthought. I do not know if that is a poor choice of words or not, but the question of how much weight to give to each report is really set out in points one, two and three. Since the committee does not have copies of the decision--

Mr. Bell: We do not have it before us. You might be more precise on the record.

Mr. Emmink: The appeal board stated that: "Having regard to the weight given to the reports of the board psychiatrist and the psychiatrist retained by the Ombudsman respectively, the appeal board finds: One, that the relevant conclusions as proposed by the psychiatrist retained by the Ombudsman are essentially of a speculative nature as compared to the more definitive conclusions as reached by the board psychiatrist."

When I say "board psychiatrist," this is not a psychiatrist on the board's staff. It is an independent psychiatrist who this man was seen by at the request of the board.

"Two, although the psychiatrist retained by the Ombudsman's examination of the complainant took place after that of the board psychiatrist, nevertheless the board psychiatrist was given an opportunity to comment and did so in a definitive and effective manner upon the conclusions reached by the Ombudsman's psychiatrist at the time of his examination. In this regard, the appeal board moreover notes the obvious advantage of the board psychiatrist's examination soon after the accident as compared to the Ombudsman's psychiatrist's examination, which was conducted some years after the accident.

"Three, that a neurologist in a prior neurological consultation, after an earlier accident in 1943, supports the board's psychiatrist's opinion to the effect that similar symptoms of the complainant's post-traumatic neuroses were recorded at that time, and which related his condition to his underlying

personality, a tendency to over-react and hypochondriasis, rather than to a physical or psychological trauma suffered at the time of the accident."

It was after setting out these three specific bases for attaching more weight to one report than the other that the board added it also had regard for their respective qualifications, and that the qualifications of the psychiatrist retained by the board were, in the board's opinion, more extensive. They used the words, "more impressive in time and extent" than the qualifications of the psychiatrist retained by the Ombudsman.

I want to make it absolutely clear that, although this was a factor, it was a minor factor in the determination on how much weight should be placed; it was by no means the deciding factor.

Mr. Bell: That deals with the question of the psychiatrists. It is unfortunate you had to add that paragraph. I take it your point is that, had you dropped off the last two paragraphs, the decision on its face is most acceptable with respect to the board's reasoning to prefer one psychiatrist's opinion over another.

Mr. Emmink: The board regrets that this impression was obtained.

Mr. Bell: Dealing, however, with the committee's comments that the panel took extraordinary steps to avoid applying the policy of benefit of the doubt in the way it made findings of credibility against the complainant and his wife, do you have anything to say about that?

Mr. Emmink: All that I can say to the committee, after discussing the committee's report with the panel, is that the panel did not take extraordinary steps. That might be construed--but they assure me they did not take extraordinary steps to avoid applying the policy of benefit of doubt. More than that, I cannot say.

Mr. Bell: One gets the impression from reading that decision that the appeal board panel did not like this particular complainant. I cannot profess to have extraordinary or a lot of experience in reading board decisions but, of the decisions that have come to this committee, I do not believe there has been an example whereby the board went into the details with reasons for not accepting an applicant's evidence.

Mr. Emmink: The only comment I could make there, Mr. Bell, is if the panel did go into some considerable detail in this case it was because of their certain knowledge that the matter would come under the close scrutiny of the committee and they wanted to be absolutely sure that everything was stated the way they saw it.

Mr. Bell: Anything else you would like to add?

Mr. Emmink: I do not think so.



11:50 a.m.

Mr. Bell: Thinking out loud, I do not know whether it is appropriate to ask Mr. Goodman if the Ombudsman has any comments.

Mr. Goodman: If the committee follows its normal practice, I would assume it would be in order. My understanding of the normal practice of the committee is that, before the committee determines whether or not the board has adequately complied with the committee's recommendation, it seeks the Ombudsman's position as to whether the Ombudsman feels that the committee--

Mr. Bell: Okay, feel free then, any time you want now.

Mr. Goodman: You will recall that the original recommendation made by the committee is referenced at tab 61 of your binders, and it was appended as--

Mr. Bell: C61?

Mr. Goodman: That is right, C61. If you take a look at pages 89 and 90 of the Ombudsman's eighth report reference, the recommendation of the committee and the present status of the matter, you will note that the original recommendation of this committee was that the Workmen's Compensation Board reconsider, by hearing, its decision of December 15, 1971:

"In that hearing, the board should at least hear fresh evidence respecting the relationship between the complainant's symptoms and the compensable accident, both from the medical referee appointed in 1971 and the psychiatrist retained by the Ombudsman during the course of his investigation."

What we have just heard is part of the reasons of the board in their further decision in response to the select committee's recommendation, such decision rendered October 24, 1979.

Mr. Bell: Sorry, Mr. Goodman, let me just interrupt. Members of the committee, the decision is, in fact, with this material.

Mr. Goodman: Yes, the decision immediately follows those two pages. Now, Mr. Emmink has been fair when he indicated that the crucial issue was the board's consideration of the medical evidence.

I direct your attention to page four of the decision and specifically, the second to last full paragraph which reads as follows: "Having now had an opportunity to carefully review the two reports of Dr. So and So"--I understand that is the doctor appointed by the board--"dated November 29, 1971, and February 11, 1980, respectively, and the two reports of the doctor appointed by the Ombudsman dated September 30, 1977, and June 5, 1980, respectively, the appeal board finds that, although there is substantial agreement as to their basic findings, the conclusions reached by these psychiatrists are essentially in conflict."

The board has fairly stated the issue. The problem is that

you have opinions of two psychiatrists which are essentially in conflict.

The new members of the committee may not be familiar with the policy on the benefit of doubt as it presently stands but, certainly, the Ombudsman's understanding of that policy is that, where the evidence on any issue, be it medical or otherwise, is approximately equal in weight--and I stress approximately equal--the board will grant the benefit of reasonable doubt to the workman.

The board offers three reasons--apart from the medical dictionary reason which I will not bother dealing with--as to why, first of all, it preferred the opinion of the psychiatrist appointed by the board. Then, having taken that position, the board says that the policy on the benefit of doubt is not applicable.

The Ombudsman would urge you to find that the board has not adequately implemented the spirit of the recommendation in that the policy on the benefit of doubt should be applicable in this case and ought to have been applied by the board because indeed the evidence on the crucial issue was approximately equal in weight. We have two psychiatrists with conflicting opinions and the evidence that they offer on the crucial issue is approximately equal in weight.

Ms. Catton will address now the three specific reasons given by the board and why the Ombudsman feels that that was insufficient reason for the board concluding that the evidence was none the less approximately equal in weight.

Mr. Bell: Can I just stop you there for a moment? I want to get back to the committee's recommendation in the seventh report which you can see summarized at page 89 of this material, the very first page in the section. The recommendation is that the board reconsider by hearing its decision of December 15, 1971. Stopping from there, they had a rehearing.

The committee also stipulated that at the hearing the board should at least hear fresh evidence respecting the relationship between a complainant's symptoms and the compensable accident, both from the medical referee appointed in 1971 and the psychiatrist retained by the Ombudsman during the course of his investigation. I do not think there is any doubt that that was done.

Mr. Goodman: That is correct.

Mr. Bell: There is no reference to policy of benefit of doubt in the committee's recommendation. The board chose to render its decision with a consideration of the applicability of that policy.

Mr. Goodman: That is right. I am not suggesting that the committee recommended that it apply the policy on benefit of doubt. On the other hand, I would suggest that it is appropriate



for this committee to determine whether or not the decision on reconsideration is an appropriate response.

Mr. Bell: I do not think you have got any problems there, but I just wanted to make sure that all the committee members know that against the background of these comments you are not really saying that the board did not in fact implement the recommendation. You are just saying it did not implement it properly.

Mr. Emmink: Mr. Bell, if I could just make a comment, I was of the understanding that the question to be determined was whether or not the board had complied with the select committee's recommendation. If we are to get into the fine points of the decision and the merits of the case, I think it only fair to say that I do not have the file here with me and I would like some time to prepare if we are going to get into that much detail.

Mr. Goodman: If I can be of assistance, let us posit the worst possible case, and I am not suggesting that that happened. Let us say that the board did everything that the committee asked it to do, that the decision on its face was totally without merit and the committee would have no problem in determining--and again I am not suggesting that is what happened here. I do not think the committee would have any problem in saying that although the board had done what the committee had suggested it do, that it was not an appropriate response to the committee's recommendation.

Mr. Bell: That is what the committee said in its eighth report. The committee said that we have some problems with what is on the face of the decision that we would like to have some explanations from the board. Mr. Emmink makes the point that he has not come prepared to chapter and verse this decision and it may be appropriate for--

Mr. Emmink: What I have tried to do is explain away the committee's concerns. If I can say anything more to that end, I am open to whatever questions you might have, but if we are going to get into the merits of this particular case then, as I say, I would appreciate some time to prepare for that.

Mr. Bell: What about this suggestion? Mr. Goodman is ready to make comments, or Ms. Catton is, subject to the committee's ruling. I do not see anything wrong with you taking those comments away and subsequently making any comments you think appropriate in writing to the committee. If you think that you prefer attendance in person it may be difficult after tomorrow.

Mr. Emmink: That is fine with me.

Mr. Goodman: It goes without saying again that the Ombudsman would request that we see a copy of whatever submissions Mr. Emmink chooses to make to you.

Mr. Bell: We have no problems with that.

Mr. O'Brien: Would it perhaps it would be best, Mr.

Bell, that the submissions of the Ombudsman be made in writing and the board respond thereto?

12 noon

Mr. Bell: That is something that the committee can now decide, Mr. O'Brien, except that I thought we might save some time now that Mr. Goodman and Ms. Catton are here and are ready--as long as it is understood that your silence is not considered to be acquiescence or agreement in anything they have said.

Before you start, Mr. Goodman, there is no doubt that the board has the authority to make findings and credibility.

Mr. Goodman: There is no doubt.

Mr. Bell: There is no doubt the board has the discretion to prefer one psychiatric opinion or medical opinion over another.

Mr. Goodman: There is no doubt.

Mr. Bell: If the board makes findings of credibility against the complainant, then the consideration of the policy of benefit of the doubt becomes more difficult, doesn't it?

Mr. Goodman: It does. First of all, of course, the committee knows that the Ombudsman would, unless the situation was clearly obvious, not find unreasonable findings of credibility by the board. I am not only talking about this board, but about any decision of any governmental organization.

On the other hand the crucial evidence here was not credibility. The crucial evidence, as Mr. Emmink has admitted and as is stated in the board's decision, was the differing psychiatric reports. In my respectful submission credibility played the smallest of parts in the board's decision. It is not even referred to in the points referenced on pages four and five. The issue was which psychiatrist's opinion we prefer. That was the issue.

It is true that the board saw fit to hear from the claimant and his wife and to make findings of credibility, but they were still faced with a medical issue and how they were going to deal with that issue.

Mr. Bell: Mr. Chairman, I think that the committee should hear from Mrs. Catton as to the three reasons why it is considered the decision is not appropriate. At a subsequent time, Mr. Emmink and the board can make a submission in writing.

Mr. Emmink: That is acceptable, Mr. Bell.

Mr. Bell: How long will this take?

Mr. Goodman: What I am going to suggest is I was making that offer on the assumption that Mr. Emmink was prepared to answer on behalf of the board at the present time. Because Mr.



Emmink is not and has asked for the opportunity to make written submissions, I would respectfully request the same opportunity for the Ombudsman's office. It is clear we are not going to resolve the matter today. Ms. Catton feels that she can make those submissions better in writing, given that we are not going to have an opportunity to resolve it today.

Mr. Bell: Who is going to go first?

Mr. Goodman: We will go first.

Mr. Bell: Are you expecting that you are going to be replying to their written submission?

Mr. Goodman: No, we will go first. We will address the written decision and indicate why, notwithstanding the opinion of the board, the board ought to have applied the policy of the benefit of doubt.

Mr. Bell: Is it intended that the board will receive your copy in writing and then respond to that?

Mr. Goodman: Yes.

Mr. Bell: Okay, that is fine. Mr. Goodman will submit to the committee and to the board their written submissions and the board will respond to those written submissions to the committee and to Mr. Goodman so that we will have a copy of everything.

Mr. O'Brien: But we will be responding to the committee and sending a copy to the Ombudsman.

Mr. Bell: Yes.

Mr. Chairman: We will return at two o'clock.

The committee recessed at 12:07 p.m.

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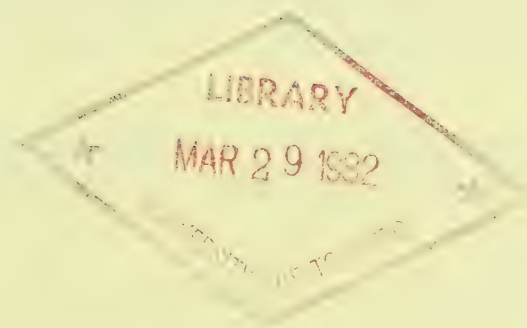
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SELECT COMMITTEE ON THE OMBUDSMAN

OMBUDSMAN'S EIGHTH REPORT

WEDNESDAY, SEPTEMBER 16, 1981

Afternoon sitting





SELECT COMMITTEE ON THE OMBUDSMAN

CHAIRMAN: Runciman, R. W. (Leeds PC)  
Andrewes, P. W. (Lincoln PC)  
Barlow, W. W. (Cambridge PC)  
Boudria, D. (Prescott-Russell L)  
Cooke, D. S. (Windsor-Riverside NDP)  
Dean, G. H. (Wentworth PC)  
Eves, E. L. (Parry Sound PC)  
Kells, M. C. (Humber PC)  
Miller, G. I. (Haldimand-Norfolk L)  
Philip, E. T. (Etobicoke NDP)  
Shymko, Y. R. (High Park-Swansea PC)  
Van Horne, R. G. (London North L)

Clerk: White, G.

Counsel: Bell, J.

From the Office of the Ombudsman:

Bohnen, Ms. L., Director of General Investigations

Goodman, B., Counsel and Special Adviser to the Ombudsman

SELECT COMMITTEE ON THE OMBUDSMAN

Wednesday, September 16, 1981

The committee met at 2:08 p.m. in committee room No. 1.

OMBUDSMAN'S EIGHTH REPORT  
(continued)

Mr. Chairman: There appears to be a quorum. We will be dealing initially with communications from the members of the public.

Mr. Bell: Thank you, Mr. Chairman. Last Thursday, members of the committee, we left off our final decision on some of these communications pending some additional information from Mr. Goodman. Since that time, another communication has been received by the chairman, and the clerk has copies which he will distribute to you.

Now, if my notes are correct, I believe in the case of communication number two there was a question asked whether there was an interview granted to this person before the decision not to further investigate was made.

Mr. Van Horne: (Inaudible).

Mr. Bell: I am sorry. It is A(c), under the heading "Communication from Members of the Public." There are five subtabs under that; I am now referring to tab number two.

Mr. Van Horne: A letter to Patrick Lawlor?

Mr. Bell: It is the letter to Lawlor that is really the opening relevant documentation. It has an affidavit accompanying it.

My notes, Mr. Goodman, are that a decision was deferred pending information as to a personal interview or meeting before the decision had been taken.

Mr. Goodman: That coincides with my notes as well, Mr. Chairman.

As a result of inquiries made by Ms. Bohnen, the director of general investigation, seated to my right, I am able to provide the committee with the following information:

Mr. Morand advised the complainant in this case that he was exercising his discretion to refuse to investigate further, by letter dated December 8, 1980. Prior to that decision, the complainant was interviewed at our office, on August 19, 1980, by an investigator, Carole Eldridge, in Ms. Bohnen's directorate, and by a lawyer in the directorate of legal services, together with Mr. Gary Farb, at which time all the information obtained to that



point in time was discussed. At the conclusion of the meeting, the complainant expressed his desire that we discontinue our investigation of the complaint, but the complainant wrote a short time later changing his mind.

Apparently this same complainant had made a substantially identical complaint to this office, which complaint was handled by our directorate of correctional and psychiatric services respecting his complaint against the Health Disciplines Board. His first submission to our office was dated way back on August 1, 1975.

The simple answer to your question is that, before the Ombudsman exercised his discretion not to further investigate, the complainant was interviewed by a lawyer and an investigator in our office.

I have also ascertained from Ms. Bohnen that the complainant was further interviewed following Mr. Morand's notice of intention not to investigate further. He was further interviewed by the same lawyer, Gary Farb, of our office on January 5, 1981, and received a further interview from the Ombudsman's executive director, Frank McArdle.

Mr. Bell: In any event, in either or both of those interviews were the reasons for the Ombudsman's decisions explained to the gentleman?

Mr. Goodman: I don't have that information before me. I know that the complainant was asking that the Ombudsman reconsider his decision to refuse to investigate further. So I must assume that the person who conducted the interview following the notification to the complainant brought the complainant's representations to the attention of Mr. Morand, who declined to change his position.

Mr. Bell: Members of the committee, last Thursday you deferred any final decision on this. You have heard from Mr. Goodman as to whether the personal interviews did take place and, from what Mr. Goodman has told us, I think that resolves the apparent ambiguity in the material whether the request for a personal interview with the Ombudsman or a personal interview generally.

You have heard and discussed previous to today the matter of personal interviews with the Ombudsman and the practical difficulties that that entails. Just to restate what I have said before, if a person expresses a concern as to the decision taken by the Ombudsman to refuse to investigate the complaint further, it is clear now that both prior to and subsequent to that decision the interviewed person was in the Ombudsman's office.

I categorize that as a concern by this person as to the manner in which the Ombudsman exercised his discretion not to investigate any further. It need not be said again that that is something for the discretion of the Ombudsman; and unless in very extraordinary circumstances where it is apparent that the Ombudsman has abrogated that function or failed to carry out that

function as the act requires, this committee will not become involved in any such decision. I have not heard anything today that would alter my opinion in that regard.

Mr. Goodman: I can provide some further information. As I mentioned, this complainant first approached the office on August 1, 1975, when he submitted a 30-page document detailing the history of his complaint. He was interviewed four times by a number of our different staff members; he had a personal meeting with the former Ombudsman, Mr. Maloney, and two more of his staff members on August 5, 1977, as a result of Mr. Maloney's report of April 21, 1976, wherein he declined to support the complainant's allegations. So he was interviewed on a number of occasions by members of our staff.

Mr. Bell: But not for this one? It must have been for another complaint.

Mr. Goodman: Perhaps Ms. Bohnen can assist. I believe that the complaints were substantially identical, which was the reason that Mr. Morand exercised his discretion not to investigate further.

Ms. Bohnen: If I can be of assistance, Mr. Bell, the initial complaint which led the complainant to approach our office concerned events which took place in a psychiatric facility and which involved certain physicians who worked there.

The first complaint which was investigated by the office was his complaint against the psychiatric facility, the Ontario hospital itself. That complaint was investigated and found not to be supported. At the same time, he was pursuing his right to complain against the individual physicians, to the College of Physicians and Surgeons, then to the Health Disciplines Board, then back to the Ombudsman.

The events, of course, did not change. We then began to investigate his complaint against the Health Disciplines Board, and Mr. Morand then decided to exercise his discretion not to further investigate after all the information which had been gathered in connection with the first investigation was reconsidered in the light of his new complaints against the Health Disciplines Board.

Mr. Boudria: So in both cases, the first and the second complaint, he was granted interviews by the office of the Ombudsman? I am not speaking of the Ombudsman personally but of the office.

Ms. Bohnen: Yes.

Mr. Boudria: I believe, Mr. Chairman, that is really what we were after.

Mr. Bell: I just think that there is nothing raised in the material that would assist you in carrying out either of your terms of reference. There is nothing on the face of the material that would indicate that would indicate you would not want to



consider the matter in more detail to assess whether any additional rules should be formulated for the guidance of the Ombudsman.

It is a matter of a person disagreeing, with very specific reason from the material, as to the exercise of the Ombudsman's discretion. That is something you have said repeatedly, you would not involve yourself in unless it is in very exceptional circumstances.

Mr. Chairman: Any additional questions at this time?

Is there agreement that we not take any action in this? Shall we move on to the next letter?

Mr. Bell: My next note, Mr. Goodman, has to do with the next item, number three. This may be more to complete the record than anything else but, members of the committee, you will recall that this was a communication received by Pat Lawlor at a time when the Ombudsman's investigation had not yet been completed. Subsequent to the communication passing between this person, Pat and myself, the Ombudsman issued and submitted his report to the individual. Is that correct?

Mr. Goodman: That is correct.

2:20 p.m.

Mr. Bell: And you were going to inquire, Mr. Goodman, whether any subsequent communication had passed between this person and your office?

Mr. Goodman: That is correct. The closing report was sent to the complainant on March 17, 1981. A copy of the report was also sent to the complainant's then MPP, the former chairman of this committee, Michael Davison. No response has been received from the complainant.

Mr. Bell: Or anybody on his behalf?

Mr. Goodman: Or anybody on his behalf.

Mr. Bell: Mr. Chairman, if I can just assist, for the reason expressed by members last time, we are not going to become involved in a matter of disagreement between the Ombudsman and a complainant before the Ombudsman's process has been complete.

In addition, it appears that a final report was issued to the person some four or five months after this communication was received and there has been no indication received in any way, shape, or form as to acceptance or otherwise.

If the committee's decision is not to become further involved, the person can be advised that the committee will not generally become involved in matters which are still pending within the office.

Mr. Chairman: How does the committee feel about that?

Mr. Boudria: It is no longer pending in his office now?

Mr. Bell: That is right; it is not. But the matter of concern in respect to this gentleman arose while the process was under way. There have been additional happenings, such as the issuance of a report to this individual, and to his member of Parliament, without any response coming back.

Mr. Goodman: I should clarify what happened here, because I think the committee will understand it better in the context of our procedures.

You will recall that we talked about administrative fairness that the Ombudsman extends to complainants; that is, before the Ombudsman makes his final report, he will advise the complainant of the substance of the governmental organization's case in response to his complaint and give the complainant a reasonable opportunity to reply to that case. In this case it was the Ontario Human Rights Commission.

What the complainant here was objecting to were certain items contained in the letter extending administrative fairness. Rather than making his representations to the Ombudsman, he chose to make them as well to the committee.

You will note that he also wrote our investigator; what you have is a letter of October 4, 1980, wherein he wrote our investigator making his submissions in response to our letter extending administrative fairness. So his response was taken into account by the Ombudsman before the Ombudsman issued his final report.

I hope that will assist the members in understanding at what stage he was objecting and what we were doing in response.

Mr. Boudria: The only thing I wonder is if this person wrote a letter to the committee thinking that the committee was going to consider his submission and he perhaps did not feel that he had to write back again just to reiterate that he wanted us to act on his complaint. Once it has been filed with us, he must assume that, even if it has been a certain amount of months or even years until we have considered his complaint, it is deemed to be still pending.

Mr. Bell: It is a point well taken that we ought not to derive much significance from the absence of any comment on the Ombudsman's final report. What we now have, though, is confirmation that the Ombudsman's process is now completed. We have my letter to him of November 19, and I have made it very clear what I had to say about it; frankly, it is that there ought not to be a precedent lightly established whereby every time a complainant disagrees with the way in which an investigation is being carried out he runs to this committee.

Mr. Boudria: I am not discussing the merits of the complaint at all but merely the principle, as to whether the complaint is still pending or it is no longer considered just



because we have not heard from him for a long time. I think those are two different issues.

Mr. Chairman: Yes, you are right. That is just the point you wanted to make for the record.

Is there anything further on this? All right, we will move on to the next one.

Mr. Bell: Number four, Mr. Chairman, contains the matter of the gentleman's request in his last letter, which is the very top letter in the material you have, for a copy of a letter passing between the former chairman and the Ombudsman.

Remember, I asked Mr. Goodman to ask of the Ombudsman whether he had any objection to a copy of this letter being passed on. We assume, from reading this letter, that it was a copy of Mr. Lawlor's letter to the Ombudsman, dated December 19, 1980.

Mr. Goodman, I think that upon some inquiries on your part there is no such a letter that exists.

Mr. Goodman: No. There is a letter from the chairman of the select committee to the Ombudsman, dated December 15, 1980. I assume that is what he is referring to.

Mr. Bell: Is there any problem with that letter?

Mr. Goodman: No. We will be pleased to provide the complainant with a copy of that letter. We will undertake to send it to him if that will be of assistance.

Mr. Bell: So, simply stated, there is no letter of December 19. The letter passing from Mr. Lawlor to the Ombudsman closest to that date is December 15.

Mr. Goodman: There is a letter of December 19, but it is not the letter referenced in the complainant's letter. The letter he references is a letter from the chairman of the select committee to the Ombudsman. That letter was dated December 15. It appears that is what the complainant is asking for. We will be pleased to send him a copy.

Mr. Bell: Okay. If you could let the clerk have a copy of the December 15 letter, we will pass it on in the usual manner. In the event a request is received for the December 19 letter, whatever it is, do you care to say anything now?

Mr. Goodman: That letter is the Ombudsman's letter in response. The Ombudsman does not feel that it would be appropriate to send a copy of that letter to the complainant.

Mr. Bell: I may say I have never been in this gentleman's good books; so there is no sense in changing now. I view his request for copies of correspondence passing between parties to be, in some cases, extraordinary and in some cases beyond that which I think is appropriate.

I think the December 15 letter is appropriate to send, as Mr. Goodman has indicated, but I think sooner or later it has to stop. I should say that view, while not articulated that way, was felt by members of the committee previously constituted.

This gentleman is also continuing to have his complaints investigated by the Ombudsman's office. Again, you have a situation of somebody complaining to this committee while he is being served by the Ombudsman. I do not believe that is a healthy arrangement either.

Mr. Goodman: I will remind the members of the committee that this same gentleman also wanted the Ombudsman to provide him with copies of all correspondence that the Ombudsman sent to the various ministries against which he was complaining.

Of course, we advised him that we were bound by our oath of confidentiality and that we were unable to reveal, except in a report, the matters the Ombudsman felt were appropriate to be set forth in the Ombudsman's report.

This is not the first time, but I hope it is the last time that this gentleman requests copies of all correspondence exchanged between people that he has had dealings with.

2:30 p.m.

Mr. Bell: Mr. Chairman, I have to complete the record of this gentleman. The clerk has provided me with two other items of correspondence which you all have. One is a copy of a letter from the gentleman to the Speaker, Mr. Turner, dated May 14, 1981, and Mr. Turner's reply indicating that any further dispensation or action is the responsibility of the committee or the Ombudsman. I think the letter speaks for itself.

Mr. Turner was declining the request for a meeting. Mr. Turner did not feel it was appropriate that he meet with the gentleman and has left that matter to the committee and the Ombudsman. The committee has decided already, with respect to this gentleman, that it will not invite him to appear before it in person for all of the reasons previously indicated. His concerns are those between himself and the Ombudsman, and ought to be resolved one way or another at that level.

I have nothing further to add with respect to that letter except that it completes the chronology of correspondence received.

Mr. Chairman: Are there any comments?

Mr. Philip: (Inaudible.) Which people in all parties get, by the way. I am not just saying it happens to be directed to that particular MPP. We all get that kind of approach.

Interjection.

Mr. Bell: There is some reference to "PC patties" in the second line.



Mr. Chairman, whereas before last Thursday we were only dealing with a request for correspondence, we are now dealing with, through the Speaker's communication, a request for a meeting.

As I told you, the committee decided before the last election that it would not invite this gentleman. There has been nothing come to your attention since that would, in my view, alter your opinion. Nothing has come to my attention which alters the advice and the opinion I expressed at that time; and, to be complete, you should make a decision on this request made.

Mr. Chairman: This is in terms of his request for copies of additional correspondence?

Mr. Bell: No. In terms of his request to meet with somebody to discuss the matters of concerns that he has.

Mr. Chairman: Is that understood? Is there agreement on that?

Agreed.

Mr. Bell: Next is number six, but it is not found on any of the tabs. It is the material distributed last Thursday, received through the chairman's office and as a result of a meeting that the clerk had with the individual personally. I have a note that the decision was deferred. I think if I could refer the members to the transcript--

Mr. Chairman: Are we dealing with this?

Mr. Bell: No. At page 40 of the Thursday afternoon proceedings, Mr. Chairman.

Mr. Chairman: Are we all sure what we are dealing with?

Mr. Bell: Yes. It is a group of material. The first document is a two-page letter from the person to Mr. Morand, dated May 25, 1981.

Mr. Chairman: It is in tab five, about halfway through tab five.

Mr. Barlow: Were you referring, Mr. Chairman or Mr. Counsel, to page 40 or something?

Mr. Bell: I was referring to the transcript.

Mr. Van Horne: It is in the mail apparently. It sure as hell is not in our hands.

Mr. Barlow: If it is the mail we will get it soon enough.

Mr. Philip: Unfortunately, sometimes the inter-office mail is slower than certain other mails.

Mr. Bell: Mr. Goodman, what note do you have about this?

Mr. Goodman: My understanding is--it is referenced at page 43--that the committee did not require any further information from the Ombudsman.

Mr. Bell: I am sorry. You have made a final decision on that.

Mr. Goodman: That is my understanding.

Mr. Bell: And that is found at page 43.

Mr. Chairman, the next item is the new communication received just this afternoon, a letter addressed to you, dated September 9, 1981.

There is a concern expressed, probably twofold as I see it. One that this gentleman at the request of the Ombudsman's office expended an amount of money and thereafter the Ombudsman decided that the matter was outside of his jurisdiction.

The last sentence of the letter really says it all, I guess. "I would like it if the Ombudsman would decide to revert to his original intention of inquiring into the 'taping'?" Have you had any opportunity of--?

Mr. Goodman: Obviously I have not. I was just handed it five minutes ago, but I am familiar with this complainant.

Again, he is a long-standing complainant to the office. He is right that the Ombudsman has taken the position that he lacks the statutory authority to investigate complaints against conservation authorities on the basis that conservation authorities are not governmental organizations within the meaning of section 1(a) of the Ombudsman Act, especially when viewed in the light of the reasons of the Court of Appeal on the Health Disciplines Board case.

It is my understanding that we have never indicated to him that we would investigate any complaint concerning the taking by the conservation authority of the land in question. It is my further understanding and recollection that we certainly never requested him to provide us at his own expense with any survey, given that we lack the authority to investigate complaints against conservation authorities and so informed him years ago.

I do not have the file in front of me, but I recall the letter advising of our lack of authority to investigate his complaint. It certainly was sent years ago.

If you would like me to make further inquiries and get the file out, and be more specific, I will be pleased to do so.

2:40 p.m.

Mr. Bell: As I see the matter, it revolves in two ways, in two areas. The gentleman does not agree with the conclusion reached by the Ombudsman that he lacks authority under his act to investigate the matter concerning the particular expropriating



authority, which happens to be a conservation authority. Members of the committee, to that extent this committee has never taken the position that it would question a decision or a judgement by the Ombudsman's office as to whether or to what extent they have jurisdiction over various boards, agencies and other things.

There is a provision in the legislation which permits the Ombudsman to obtain a decision of the Supreme Court of Ontario on any matter and the Ombudsman, for whatever reason, has decided that its in-house opinion on the conservation authority is all that is necessary. On that plane only, my advice is that this is not a communication or it is not a matter raised that would assist you in carrying out your term of reference.

The only remaining item, Mr. Goodman, and you may want to take some time to take this under advisement, is found in the fourth paragraph of the first page; that is, the request to provide your office with some items which apparently are recorded at a cost of \$5,000.

If the gentleman was asked to expend a certain amount of money approaching that size, only to be told afterwards, "We do not have jurisdiction; we are sorry," he might have a legitimate reason to say, "Why did you ask me to spend it in the first place?"

Mr. Goodman: Yes, I agree, if that happened.

Mr. Bell: That is right. I am thinking out loud for the benefit of the committee. I think, in fairness, you should take as much time as you think you need to seek that information. I do not think either, members of the committee, that the Ombudsman needs to obtain a consent from this person for the release of that information.

Mr. Van Horne: Excuse me, Mr. Chairman. Was it suggested that the Ombudsman did not ask for that?

Mr. Bell: I do not think Mr. Goodman is in a position of saying one way or another right now.

Mr. Goodman: I said that my recollection is that we did not ask him to expend any amount of money--

Mr. Van Horne: That is not the impression this letter gives.

Mr. Goodman--only to tell him later that we lacked the authority to investigate the very matter he was complaining of to us.

Mr. Philip: The fact is that Mr. Goodman cannot give us an answer at this time. The easiest thing is for him to come back to the committee with an answer and for us to take no action until we have that answer.

Mr. Goodman: That will pose no problem. I will have your answer for tomorrow.

Mr. Bell: Specifically, Mr. Goodman, so we can address the specific matter that the gentleman has raised, did your office, prior to a determination of jurisdiction, request to this person to provide the office with a topographical survey--of the land in question, I take it?

Mr. Goodman: I will be pleased to provide the committee with the results of my inquiries tomorrow morning, assuming I can put my hands on the file between this evening and tomorrow morning at 10.

Mr. Bell: Thank you.

Mr. Chairman, with the exception of this last item, I think in summary that decisions have been made in each case that the matters raised would not assist you in the carrying out of your term of reference and that the persons will be appropriately communicated with in writing by the committee, setting out the decision of the committee and the reasons.

With that, I would ask that the documentation that has been distributed, or I would remind you of the ruling made last week, the documentation is still confidential and will hereafter be confidential and, perhaps for maximum security, we should ask the clerk to collect it all and appropriately dispose of it, save and except one file copy for reference.

Mr. Chairman: Any problems with that?

Mr. Bell: I should say I believe we can complete all outstanding items on the agenda by this afternoon. It would require us to sit at least until the normal time that we sit, but it also might require a few more minutes if the committee members would bear with me.

Mr. Chairman, members of the committee, regarding the item on the South Cayuga report you discussed last week wherein you reaffirmed the committee's decision to invite the person in question to attend before you, Mr. White tells me he has tried to inform the person and was told he is away on vacation until the end of this week; so that makes academic any attempt to get him here for tomorrow. I guess the invitation will be extended at such time as the committee settles any fall or winter schedule. I don't think there is anything more we can do about that.

Members of the committee, if you would turn to the item B(b) in the brief, we will complete the two remaining responses from governmental organizations to the committee's eighth report, specifically the response from the Ministry of Health on recommendation one and responses from the Ministry of Housing on recommendations two and three.

Item B(b), item one, deals with the Ministry of Health. Just to give you some background, this had to do with a matter considered by the committee in its seventh report dealing with the Ontario health insurance plan, eligibility for coverage in respect of certain surgical or operative procedures not conducted in Canada but elsewhere in the world, and the committee's and the



Ombudsman's perceived need for certain restatements under the code to provide perhaps more certainty and certainly to permit more flexibility for the general manager and the plan to approve the coverage for certain procedures.

The first thing I have extracted from the material for you is a letter I sent to the then deputy minister on August 12. Thereafter, you will see the three pages of the committee's eighth report. What happened is that in the committee's seventh report, you recommended that an amendment be made to the Health Insurance Act to provide: "Where the amount payable by the plan for an insured service rendered by a physician is not prescribed by the regulations, it is the function of the general manager and he has the power to determine the amount."

Subsequent to that recommendation, you heard from the general manager as to certain concerns raised. He made certain suggestions by way of compromise which the committee thought to be reasonable and accepted.

There is a reference that the Ombudsman and his people did not think the response to the recommendation went far enough. There was a concern expressed as to still nonsurgical procedures excluded from the code. At page 17 the committee acknowledged the concerns of the Ombudsman as genuine, but nevertheless said for the present they are prepared to rely upon the suggested alternative by the general manager and let's just see what happens.

2:50 p.m.

However, there was a remaining issue the committee was concerned about, which was that people who apply for coverage in these circumstances and are denied it in whole or in part be informed when the decision is communicated, that they have a right to have that decision reviewed or appealed. That is why the recommendation is made in the way that it is, that prompt notice be given to all persons whose claims for benefits are under R990, which is now R991--full particulars of the appeal procedures et cetera.

2:50 p.m.

To complete the record, in Hansard for May 14, 1981--you have this in your materials under Workmen's Compensation Board; you don't need to refer to it now--at page 695 of that report the Hon. Mr. Timbrell says, "Just to make life easy for everybody, let me say the Ministry of Health accepts the recommendation of the committee with respect to recommendation one, which I want to read into the record," and he so does.

You will see that the very next document in this brief is a letter from Malcolm Gibson, the general manager of OHIP, to me, dated September 1, 1981, wherein he speaks to the implementation of that recommendation. I think if you just start at the third paragraph on the first page, beginning:

"On May 21, 1981, I wrote to E. J. Murray, director of OHIP's professional services branch, informing him of the

acceptance by the Minister of Health on May 14, 1981, of the committee's recommendation and requesting that he implement the recommendation, and this has been done. In addition, I have instituted a procedure to ensure all such cases are reviewed by me."

He then speaks to the specific issue of out-of-province medical services where such services are not available in Ontario. He goes on to say:

"Where the issue is medical necessity and where there is a dispute involving a decision of the general manager, the claimant is referred to the medical eligibility committee and may appeal further to the Health Services Appeal Board if not satisfied with the decision of the committee."

He then says that this procedure is identical whether the service is performed in or out of the province.

The second paragraph on page two is worthy of repetition:

"The ministry's position, which reflects the recommendation of the select committee, is that a lenient and flexible approach should be taken in such cases and that all decisions of the general manager in such cases should be appealable, in that the claimant should be notified of the fact and of the procedure to be followed in all cases where the claim is refused or is reduced."

As is the practice, Mr. Chairman, we have asked Mr. Goodman or Ms. Bohnen to offer their comments. They may be a little shy after what the committee said last time, but we will ask in any event. Speaking for myself, I think that constitutes a compliance with the recommendation. It may be more than compliance; they may have built in more than one level of appeal.

Mr. Goodman: Ms. Bohnen will be providing the committee with the Ombudsman's position on the Ministry of Health's response.

Mr. Bell: Mr. Chairman, I don't have anything to add. The committee members might wish to hear from Ms. Bohnen before making comment.

Ms. Bohnen: Thank you. As you might expect, we continue to have contacts with OHIP over cases of the same type or cases similar to the type which led to the Ombudsman's recommendation and the committee's subsequent recommendation.

The cases we have dealt with so far, of course, predate the administrative changes which Mr. Gibson refers to in his letter of September 1, 1981, although we do have in the office at the moment some cases which involve ongoing contact between claimants and OHIP.

We do have some continuing concerns. Unfortunately, since Mr. Gibson and no one else from the Ministry of Health is here, I am not sure that you as a committee will be able to deal with some of these concerns, but I would like to state them for you.



One of our concerns, which was reflected in the select committee's recommendation, was that notice of the appeal procedures be given at the same time as notice of refusal. Mr. Gibson states that he instructed Dr. Murray to implement the recommendation and that this has been done. I have no personal direct knowledge whether this has or has not been done, and certainly I would take Mr. Gibson at his word.

I do know that there have been administrative problems with this within OHIP, and I would be interested to know in what manner this has been done, because the timing of the notice has been a matter for continuing concern.

Mr. Philip: Are you saying you have had additional complaints?

Ms. Bohnen: We have additional complaints which may well predate May 21, 1981, but I have had conversations with Mr. Gibson after May 21, 1981. I don't have any specific information about the administrative change which was made to comply with this recommendation.

Since I know from past investigations that notices of decisions to claimants in OHIP are highly decentralized, I would be interested to know how the general manager is giving notice to people of their rights to appeal and of his decision and at what time he is doing that.

Mr. Bell: There has to be a certain amount of--

Ms. Bohmen: Excuse me, Mr. Bell. May I continue for one minute, please?

As I mentioned, I have had discussions and communications with Mr. Gibson after May 21, 1981. One of these was a letter from him which indicated that the notice of the right to appeal would be given if the person comes back to OHIP disputing the decision rather than at the same time the notice of the refusal is being given, which makes a difference, as you can appreciate. Many people may just accept no and not go back and quarrel. So we did have some concern whether the notice of the right to appeal was given concurrently with the notice of decision.

Mr. Philip: Basically, what you are questioning is not that the objective has been met but that the process being used may affect the success of the objective.

Mr. Goodman: No. In fact--

Mr. Bell: You are saying the recommendation, from your information, hasn't been implemented.

Ms. Bohnen: I am saying I have no specific information that it has been. While I don't quarrel with what Mr. Gibson says, my conversations with him since then don't reassure me that specific administrative changes have been made to accomplish the objective. I would be interested to know from him, as I expect you would be, exactly what change has been made.

Mr. Goodman: Especially in light of the fact that we recently received a communication which Ms. Bohnen referred to from Mr. Gibson which cast doubt on whether in fact there is compliance with the recommendation, in that the notice of the appeal procedures is not sent out, as the committee recommended, at the time notice of refusal is given, but rather only if the claimant comes back to the ministry and disputes the decision. That is not compliance with the select committee's recommendation.

Mr. Bell: I understood that was a May 1981 conversation. Right?

Ms. Bohnen: No. The May 21 communication I am referring to is Mr. Gibson to Dr. Murray requesting--

Mr. Bell: When did you have this conversation with Mr. Gibson?

Ms. Bohnen: My last conversation with him on matters related to this was the week before last. But I didn't have this material, and I didn't ask him exactly what form had Dr. Murray devised or what system he had implemented. But nothing he told me then--and we were discussing these matters--reassures me that something specific was done to change OHIP's system which, as it stands now, I don't believe would carry out the select committee's recommendation.

Mr. Philip: It sounds as though there is enough doubt that it would give us reason to invite Mr. Gibson to come before us.

Ms. Bohnen: There are some other concerns as well, Mr. Bell, if you would like me to go on.

Another issue which relates to the second paragraph on page two of his letter is the ministry's position that a lenient and flexible approach should be taken in such cases et cetera and all decisions of the general manager should be appealable.

A couple of problems have remained in this area. First of all, as you may be aware, the Health Insurance Act itself sets out when appeals are granted; so I have a little bit of concern about the Ministry of Health saying, "We take a lenient and flexible approach," when I would have thought the law was quite clear that appeals had to be granted in certain situations.

More concretely, though, in a number of cases OHIP has continued to take the position that, if in its opinion the service claimed for is not an insurable service, there is no requirement on it to give an appeal and therefore it is not giving an appeal.

So, although I accept the general manager's statement that the ministry thinks that all decisions should be appealable--

Mr. Bell: That's all he says: "all decisions of the general manager."

Ms. Bohnen: Well, those are the decisions we are



speaking of--all the decisions of the general manager should be appealable. Again, my subsequent conversations and dealings with the general manager of OHIP on these cases lead me to believe that may not be their position in full and it may not be how they are applying the Health Insurance Act appeal provisions.

Mr. Bell: You may know the act better than I do, but I am not aware of any general manager decisions which are not appealable. Maybe you can share them with me afterwards if you know of some; in the context of the recommendation that we are talking about.

You may have some other points, but I think we had better save them. Frankly, what you are saying is that, whereas Malcolm Gibson has said that the recommendation has been implemented, from your information it has not.

Ms. Bohnen: I don't wish to say that from my information it is not. From my conversations with him, I have no knowledge that they have been. I would be very interested to ask him some followup questions, because I just have some concern. Perhaps it is just a question, Mr. Bell, of them not having trickled down to the actual administration arms.

Mr. Bell: We have got enough time; maybe Mr. White could call Mr. Gibson and ask whether it is convenient for him to drop down tomorrow morning. He might do so immediately and let us know before we rise today.

Members of the committee, so that you know where I am coming from, I took the letter on its face; when a man tells me that a recommendation has been implemented, unless we hear something to the contrary, I am prepared to accept it.

But we have to rely on Ms. Bohnen's information as perhaps being inconsistent with what this letter provides. There may be a simple explanation.

Ms. Bohnen: Mr. Bell, I would like to clarify; I certainly do not want to be taken as suggesting that Mr. Gibson is misleading you in any way. I just have followup questions that relate to the actual implementation of his intentions.

Mr. Goodman: And the committee's recommendation.

Mr. Bell: I will tell you what is of concern to me: The recommendation says that notification of available appeal procedures be communicated at the same time as the notice of refusal is communicated. You have told me that you have been told by the general manager that in some cases the communication of available procedures is only made to people who come back afterwards and dispute. That is the squeaky-wheel-getting-the-oil syndrome. In fairness to Mr. Gibson, he should be asked to clarify his conversation with you.

Ms. Bohnen: I was told in writing by him that was the case, that the squeaky wheel, so to speak, would be told of his right to appeal. In a subsequent conversation he seemed to express

sympathy with the view that they should be told at the same time.

Mr. Bell: I think we had better deter this one any further, Mr. Chairman. Will this transcript be processed tonight?

Clerk of the Committee: No.

Mr. Bell: Next, Mr. Chairman--

Mr. Goodman: Before you proceed, Mr. Chairman, I have some rather unfortunate information to give to you with respect to the complainant against the conservation authority. Apparently our file was closed in October 1977 and is, accordingly, in archives. We will have to retrieve it.

Mr. Bell: We won't find out tomorrow, will we?

Mr. Goodman: We will do our best to get it tomorrow; that is my information. I think it is in Cooksville.

Mr. Bell: Okay. The next tab has to do with the response of the Ministry of Housing to recommendations two and three of your last report.

This has to do with the local housing authority. A complaint came to the Ombudsman in respect of a family trying to get accommodation and being refused or deferred a number of times. This particular complaint and the concern of the family, I think, has received some notoriety in both the local and the national press and other media.

The recommendations dealt with two different levels. Recommendation number two supported the Ombudsman's recommendation and said, "Provide those people with suitable accommodation immediately." The second recommendation was more general in scope. It became apparent to the committee when it reviewed the particular decision manuals of the authority that perhaps there could be more advice and assistance given to local housing authorities as to what a minimum procedure requirement was against the background of the legal principle of administrative fairness.

That principle really says that where a body, statutory or otherwise, carrying out a decision-making function under authority of law is considering a decision which is capable of affecting the interests of a person, a private citizen, that body has an obligation to inform the person of all relevant factors which it intends to consider in making the decision and give the person an opportunity of making submissions or responding or providing additional information which may assist.

There is a third one, which apparently is emerging now, that if the person wishes to be represented by a lawyer he may be, but it is not relevant for your purposes. That is a very simple statement of the rule of administrative fairness, as I understand it, and at least on the facts of this case that was not done.

You will see the very next document, after the relevant pages of your eighth report, is a letter from Mr. Beesley, the



general manager of Ontario Housing Corporation, and he is pleased to report that on or before October 1 the family will be accommodated. I do not have anything more to say about that one. Ms. Bohnen, do you?

Ms. Bohnen: Just that we are very pleased.

Mr. Goodman: I may say that the Ombudsman is very pleased with the result of the case. I think it is an excellent example of how the system can work in the event that a particular governmental organization declines, for whatever reasons, to implement the recommendation of the Ombudsman. The select committee then considers the complaint and so reports to the Legislature on its consideration.

I think the committee is to be congratulated for the work it did in bringing this case to a successful resolution.

Mr. Philip: It may be congratulated but, as I recall, this is a matter that has been dragging on for some time and not only was the Ombudsman approached but also this was a case that came before the justice committee on its inquiry into Ontario Housing; so certainly the authority was not very fast in coming around to this position. How far did it go back? I am sure I have been receiving letters or reports on this for a few years.

Ms. Bohnen: I do not believe it goes back that far in terms of the Ombudsman's involvement. The first time it came before this select committee was at its last sittings in July, and the complaint had been made to our office the previous December.

3:10 p.m.

Mr. Goodman: It may well be the same complaint, we cannot say, because the complaint is notorious. It was before the CBC Ombudsman; it was well publicized in the papers.

Mr. Philip: When did they first apply for housing?

Ms. Bohnen: I do not recall.

Mr. Goodman: It is referred to in the committee's eighth report, a history of the case. February 1979.

Mr. Cooke: Not a particularly good example of how the system can work--not your system; that system.

Mr. Goodman: As I say, the complainant had been to a number of individuals and organizations in an attempt to secure housing and was unable to do so until the select committee's recommendation was adopted and approved by the Legislature and the housing authority subsequently decided to implement the wish of the Legislature.

Mr. Bell: Members of the committee, unless you have anything to say about recommendation two, I would like to examine with you number three. Also for reference, at pages 696 to 700 of the May 14 Hansard, reference is made to the two recommendations,

and at page 698 Mr. Bennett says the following respecting number three:

"We are dealing with the manuals of the Ontario Housing Corporation, and the committee indicates that it 'conduct a review and study of its manuals and the decision-making functions of housing authorities in particular for the purpose of amending its manuals to give housing authorities more guidance in order that the rules of administrative fairness will be more strictly adhered to.'

"I would like to report to this House that the manual is one of the documents that is constantly under review as a result of input from housing authorities and others. I trust we are not going to get to the point, as we have said in the earlier statement, that the autonomy of the housing authority is taken over entirely by a provincial operation.

"One of the reasons we established the local housing authorities--and I think it was in the best interests of the delivery of that service--was to allow for a certain amount of local input to the operation. But in response to recommendation three--and we accept the recommendation obviously, because we are in the process of doing it virtually on a weekly or monthly basis; we try to involve more than just the people of the Ontario Housing Corporation...we will continue to upgrade and improve and we hope, with the understanding of the community housing authorities and the OHC, to find guidelines and rules that are workable and which will allow us to deliver through the housing authorities the best program to the people applying for the units."

I believe that is all with respect to the specific implementation. So it was accepted, and again you have the remaining part of Mr. Beesley's letter and the attachment, some specifics as to what has been done. Obviously those activities were not a direct result of this report and recommendation. I am sure that the proceedings before the justice committee contributed in no small measure.

What I boil this all down to is that at some time in the very near future, be it the end of this year, he says at page two, "It would be my expectation that procedures and guidance for implementation of a formal appeal mechanism could be issued by year's end by incorporation into the field manual." It seems to me they are doing the study now and hope by the end of the year to have something implemented.

I have read the attached memorandum, and I am sure Mr. Goodman and Ms. Bohnen will have something to say about this, but it seems to me that the matters raised in that memorandum certainly deal with the consideration of administrative fairness. Maybe on a reverse approach, it includes a procedure to remedy any breaches of that rule, although I think it is implicit that more information to members of the public and access by members of the public to these housing authorities is going to be instituted.

I think you are in a process now where you are going to have



to continue to hear from the housing authorities until such time as the amendments are instituted.

Mr. Goodman: Members of the committee will recall that this was a case where the select committee went one step further than the Ombudsman. The Ombudsman only addressed the situation of the claimant or the applicant for housing. You will note on page 37, at the bottom of its eighth report, having heard from the housing authority and the Ombudsman on the particular complaints, the committee observes as follows:

"In any event, in the committee's opinion it is incumbent upon the Ontario Housing Corporation to give the housing authorities in Ontario more guidance and directions in the matter of decision-making than that which is found in its manuals."

It was that observation, as I understand it, that led to the committee's further recommendation to the Ontario Housing Corporation. I wasn't privy to the in camera deliberations of the committee; so I don't know what the considerations were that led to this specific recommendation with respect to the rules of administrative fairness or where in the process the committee felt those rules were not being adhered to and ought to be.

The chairman of the Ontario Housing Corporation, in his memorandum to individual housing authority chairmen, dated October 15, 1980, addresses two distinct points in time. The first is to applicants, that they ought to be advised that they have the right to appeal the decision to deny housing by appearing in person before the authority, accompanied by representatives.

The second is to residents, that before a housing manager requests permission to seek a court order for vacant possession and before the housing authority turns the matter over to a solicitor that the tenant be informed of the decision reached and advised that should they desire they have the right to discuss the issue directly with the housing authority. That certainly addresses administrative fairness at that level.

Advising of the right of appeal--I don't know whether that was what the committee had in mind. Those are all the comments I wish to make. The committee knows better than I do and the Ombudsman's office what it had in mind when it made the recommendation.

Mr. Bell: Without breaching any confidentiality, the committee realized when it considered this recommendation that it wasn't inventing the wheel, that there was another committee dealing with substantially the same issues.

In my understanding, the review by OHC of its manuals, against the background of the justice committee proceedings and this recommendation, will come up with a result which provides for compliance with the rules of administrative fairness in the context of housing authorities' decision-making process.

It is impossible to put any real specifics beside the committee's recommendation. I think you examine the facts of the

investigation that were disclosed and the feeling that there were more guidelines in there and, were they adhered to, the problems may not have occurred.

3:20 p.m.

I think the committee right now has gone as far as it can go without seeing what the product of that review is. Members of the committee, you might consider in your next report and in any event communication to Mr. Beesley that the committee looks forward to receiving the results of the exercise he refers to in his letter. Otherwise, you will not be able to assess whether or to what extent the recommendation has been complied with.

It will be done in the usual course in any event, because you cannot consider this matter to be closed and, therefore, the Ombudsman will not consider it to be closed. He will put it in one of his two appendices--A, I guess--in the next report.

Mr. Goodman: If the committee is satisfied that there has been substantial implementation, of course, then we would not normally do that. If the committee wants us to continue to include it, we will be pleased to do so.

Mr. Philip: There is no evidence; so obviously we must ask Mr. Beesley to report to us when next we meet. His deadline is October 1, is it not, that he said it would be implemented by?

Mr. Chairman: That is at the end of the year. From the Ombudsman's point of view though, there has been compliance.

Mr. Goodman: As I say, this was a case where the committee made a further recommendation. It appears that Mr. Beesley is saying, "Look, here are two steps that we have taken to improve administrative fairness." I guess it is up to the committee to determine whether it feels those two steps are substantial compliance with its recommendation that it conduct a review of the body of its manuals and decision-making functions of housing authorities for the purpose of amending its manuals to give housing authorities more guidance in order that the rules of administrative fairness will be strictly adhered to.

It certainly addresses two situations; whether the committee had more in mind is, I guess, up to the committee to decide. But we will be guided by your decision. In the event you wish us to continue to include it in the appendix, we will do so.

Mr. Chairman: I think there is a clear indication--do other members of the committee have any views on this, carrying this forward? Do you have an indication, Mr. Goodman, of the wishes of the committee?

Mr. Goodman: Yes. We will be pleased to include it, and it will appear in the Ombudsman's ninth report, appendix A.

Mr. Bell: Mr. Chairman, if there are no further questions or comments on housing, that completes the responses



from the governmental organizations to your eighth report. We can now go on--

Mr. Boudria: (Inaudible).

Mr. Philip: (Inaudible) particularly after defeating the standing committee on administration of justice's report on Ontario housing, to have this sudden show of nonpartisanship is quite encouraging.

Mr. Bell: Members of the committee, if you could turn now to your brief, C(g), number four, we are going to start number one. Can you just do a little housecleaning, members of the committee? If you would look to tab II, which obviously is the very next tab, you will see that there is a letter and a report from the Ontario Council of Health. It has been misfiled. It is to be considered by you under Roman numeral I.

Mr. Barlow: This letter, is this to go with that?

Mr. Bell: There is a letter from the former Deputy Minister of Health, Mr. Tom Campbell, to the chairman, dated May 13, 1981.

Mr. Barlow: That goes with the report.

Mr. Bell: From there right down to the end it goes in tab I instead of tab II.

With that, I shall act as clerk again and distribute the letters this morning. Maybe you already have the letter from the Deputy Minister of Health, Mr. Graham Scott, dated September 16. You can plug that in here as well. We are going to refer that letter with item three, and you can put it there for storage purposes.

If everybody has got this, this is the Dr. Claude Macdonald matter. Dr. Macdonald, some of you may recall, is a practising physician in the city who criticized, took issue with and took some formal proceedings in respect of his unsuccessful efforts to obtain hospital privileges at a hospital in this city.

He complained to the Ombudsman, who investigated and reported that certain things should be done by the Ministry of Health in respect of the Public Hospitals Act and in respect of certain procedures undertaken by the Hospital Appeal Board.

I think it is fair to say that all but one aspect of these recommendations have been attended to by the ministry. The only one remaining, which probably is the substantial one, is an implementation of your recommendation in reports five and six that a study be undertaken of the legislation with a view to effecting legislative amendments to various sections which are identified as having the potential of being discriminatory et cetera.

The committee has met with representatives of the Ministry of Health about this, I think now on three occasions, and the last time--

Mr. Van Horne: Sorry, could I interrupt for a moment? You said the recommendations have all been accommodated except one. Are these the recommendations that appear starting on the summary sheet?

Mr. Bell: Yes. For example, report five, recommendation 27, and report six, recommendation one.

There were a number of recommendations going through to the question of the quorum of the Hospital Appeal Board, the constitution of its members and what could be done to ensure there was a fairly representative quorum. Those measures have been implemented to the extent of the minister's ability, having regard to the present legislation. What is now left is a determination of whether or to what extent the legislation should be amended to give complete effect to the recommendations.

In any event, to that end the Minister of Health commissioned a study of the ministry by the Ontario Council of Health to review the legislation and to come forward with findings and recommendations. To that end, the report sent to the chairman by a covering letter of May 13, 1981, is the study.

You should read with that study the letter just received from Mr. Graham Scott and, in particular, the second paragraph on the first page. You can see that the report of the Ontario Council of Health has been referred to the Ontario Hospital Association and the Ontario Medical Association for review and comments.

3:30 p.m.

These, which I take to be the review and comments, are being discussed at a joint task force which is reviewing possible amendments to regulation 729. That task force committee is under the chairmanship of the previous executive director of the North York General Hospital--the hospital, by the way, that Dr. Macdonald took issue with.

"We are hopeful that this committee will complete its review of the situation late this year and that any necessary changes in legislation and regulations can be introduced in the spring 1982 session of the Legislature."

They say: "We are in broad sympathy with the recommendations from the Ontario Council of Health, but we will not finalize our decision on this matter until we have specific recommendations of the joint task force. Please be assured, however, that you will be kept informed of progress and our intentions with regard to changes in the legislation or regulations."

I have read this report, and I am sure Ms. Bohnen and Mr. Goodman have as well. There is enough in there, in terms of findings and recommendations, that would seem to me to require some legislative amendment. Do you share that observation, Mr. Goodman?

Mr. Goodman: Certainly there are some acts identified,



as I understand it, that could be seen to be improper or discriminatory--recommendations for change.

My concern is, you will recall the Ombudsman's original recommendation, supported by the select committee and the Legislature, as contained in the Ombudsman's fourth report, detailed summary number 45, was that there not only be input in the study conducted by the Ministry of Health, from doctors and hospital boards, but from the very public these boards are supposed to serve.

I do not see any indication in either Mr. Campbell's letter or, more latterly, Mr. Scott's, that the ministry intends to do that. I am quite surprised to see that the very task force that is going to consider the helpful report of the Ontario Council of Health is chaired by the former executive director of the same hospital which denied our complainant hospital privileges.

I would refer you to the Ombudsman's report and invite the select committee to urge the ministry to provide for public participation before the task force. I do not think it is sufficient that the ministry merely consult with the Ontario Medical Association and the Ontario Hospital Association, which is what Mr. Campbell refers to in his letter of May 13.

It may be that the task force will consider representations from the public and, if that be the case, we are very pleased at the Ombudsman's office. I would ask the select committee to ensure that its recommendation and that of the Ombudsman are complied with to that extent.

Mr. Bell: Members of the committee should know that is not expressly included in any of your previous recommendations. To maybe complete the chronology in report number six, the first recommendation recommended that "The Ministry of Health consider what changes should be made to the Public Hospitals Act, and section 47 in particular, including changes in the quorum provisions and length of membership respecting the Hospital Appeal Board to give better effect to the principle of a widely distributed membership of the Hospital Appeal Board. Further, the Ministry of Health cause an inquiry to be made into the provisions of the Public Hospitals Act to identify and correct any acts flowing from sections 44 to 50 of the act which may be improperly discriminatory."

When the minister responded to that in the House and subsequently through members of his staff before the committee, they said, "This is the first step we are going to do." I am referring to Mr. Berstein, the director of legal services in the Ministry of Health, when he appeared before this committee. He admitted that was only the first step in compliance with the select committee's recommendation, namely, obtaining a report from the Ontario Council of Health.

Mr. Goodman: No. The first step was to consider how to do it. The second step was to give it to the Ontario Council of Health. Anyhow, the point I am making is, I do not recall in any discussions, as far as implementation of the committee's

recommendations, before today, that there was to be an absolute requirement that members of the public be given an opportunity of making submissions.

Mr. Philip: I fail to see how that affects our making a recommendation of that kind at this time.

Mr. Goodman: I am not saying it does. I am just making sure that you have your background completely up to date.

One of the other aspects of this is it is a continuing process. You are receiving a report and you are being told there is a further study with a view to amendments in the next section.

Mr. Philip: As part of our monitoring of that continuing process, it is perfectly legitimate for us to make recommendations on the ongoing process, is it not?

Mr. Bell: It is certainly appropriate for the committee to comment upon that.

Mr. Philip: That is all that is being asked.

Mr. Goodman: That is right. The committee did that. If you refer to the chart which the Ombudsman appended, which is referenced at tab one, you will see that the committee saw fit to comment on the steps taken by the ministry in its last report, the eighth report. I invite you to read what the Ombudsman had to say in his fourth report, detailed summary 45, and what the committee had to say in support of the Ombudsman's recommendation in its fifth report.

Mr. Bell: The Ombudsman did recommend an inquiry be taken, didn't he?

Mr. Goodman: That is so.

Mr. Bell: By an independent body; he suggested the Ontario Council of Health.

Mr. Goodman: That is right. But it was the minister's decision to limit that inquiry to a determination as to alternative systems for hospital appointments in place in other jurisdictions. That was not the Ombudsman's recommendation nor the committee's.

Mr. Bernstein was frank in admitting that was only the first step; that the minister limited the inquiry to be conducted by the council of health to alternative systems in other jurisdictions; and that, once the minister received that, he would then determine what further steps he should take.

It appears that the minister is now intending to consult with the OMA and the OHA and to appoint a task force. All we are suggesting, as we did in the first place when the Ombudsman reported on that matter, is that the task force or the ministry also receive representations from the public; apart from merely medical and hospital records.



Mr. Bell: On page 14 of your last report, you indicate you understand that the inquiries of the minister as addressed to the Ontario Council of Health are not in fact the inquiry as contemplated by the recommendations. Rather, it is a first step in an effort to gain necessary insights into the process in other jurisdictions, which it is expected will assist in an articulation of the issues which the inquiry will address itself to.

You also say, at page 15: "The Minister of Health is reminded that to the extent that the council of health identifies appropriate legislative change and so recommends to the minister, the committee will view those legislative changes as necessary to fully comply with the recommendations in its sixth report."

Mr. Goodman's point is very well taken in that to the extent the report does not fully comply with the recommendation, you might indicate to the minister, at the very least, that an invitation of comments or briefs from members of the public would be an appropriate part and that you would look forward to hearing from the minister if, as and when those legislative changes are drafted.

3:40 p.m.

My point, really, is that there is not much more we can do right now but to continue to follow the process and to make any comments appropriate at this point, unless anybody feels it is necessary to ask somebody from the Ministry of Health to come before you and to further explain the process that is contemplated hereafter.

Mr. Chairman: I think we have on record what they are planning to do. As you have suggested, concerns have been expressed about public involvement. It is my opinion that we can do it that way, simply including in our report our concerns about how they go about the study.

Mr. Bell: I think the clerk could also send a copy of the transcript of this afternoon to the deputy minister for his information--in addition to any comments you will make in your next report.

Mr. Chairman: All agreed?

Mr. Goodman: We will continue to include it in our appendix then, Mr. Chairman.

Mr. Bell: Yes. Do so.

Mr. Goodman : As a further update on our complaint to the select committee from the gentleman who was complaining to the Ombudsman about the conservation authority, it appears we will not be able to retrieve the file from archives until Friday.

Mr. Bell: In that case, Mr. Goodman, when you have the information that has been requested, if you could just send it off to the committee in care of me, I can then provide the committee members with copies and we will consider it then. Feel free to

make any and all comments you want that you think will assist the committee.

Mr. Goodman: Thank you. We will do that.

Mr. Chairman: I might point out that Mr. Gibson will not be able to make it tomorrow, but Dr. Murray, who is the director of OHIP's professional services branch, will be here to answer your questions.

Mr. Bell: Dr. Murray has been before you before, and he knows all about that case.

Next, Mr. Chairman, is under number II. We have already done this one. It is the very same as the Ministry of Health's response to your first recommendation in his report. Unless Mr. Goodman or Ms. Bohnen have anything additional to add, we will save it for tomorrow morning.

Mr. Goodman: Nothing further to add, Mr. Chairman.

Mr. Bell: Next is under III. You are again going to have to refer back to the deputy minister's letter, because the second page deals with his response.

This had to do with an investigation by the Ombudsman respecting a complaint by an unsuccessful applicant for a nursing home licence. As a result of the investigation, the Ombudsman concluded that there ought to be information provided to all applicants as to what information they were required to submit with the application and, secondly, a more detailed explanation to unsuccessful applicants of why they were unsuccessful.

At least three years ago the ministry accepted the recommendation to improve its procedures. For some reason--oversight probably--this was overlooked. Mr. Morand, by virtue of his appendices, jolted everybody to realize it had not yet been done; so Mr. Scott writes as follows:

"We have in mind to introduce the specific changes with regard to the award of a conditional licence as recommended. We are hopeful that amendments to the Nursing Homes Act may be introduced in the spring 1982 session and that this specific matter may be covered at that time. I might add that, over the last several years, the ministry has formalized the request for proposal process for new nursing home beds. This provides for all applicants to complete a standard questionnaire which elicits appropriate information.

"Following application of a standard marking scale of this process, the top candidates are interviewed and standard questions are asked. I believe this represents a substantial improvement over the system which was criticized in the Ombudsman report, 1977. It certainly appears to provide..."

I do not think that answers the question, frankly, because I do not see anything in that response that deals with the type of information that is given to an unsuccessful applicant.



Mr. Goodman:: Nor the criteria upon which the ministry intends to rely on making the award given to prospective applicants, including the weight to be attached to each factor. So I share your concerns, Mr. Bell.

Mr. Bell: I should tell you I had a conversation with somebody in the legal branch of that ministry about three weeks ago, and he said: "In deciding how we are going to implement this recommendation as to how and to what extent we give reasons to unsuccessful applicants for our decision, we have a real concern that we might be infringing upon some duty of confidentiality. Secondly, we are concerned that if we give reasons, on a comparative basis, with respect to the successful applicant, we might find ourselves in hot water, because all materials received on these applications are strictly confidential. They must provide financial data and sometimes quite personal data."

So this fellow was being concerned out loud. I said that was a reasonable concern to have and why didn't he set it out in writing to the committee, tell the committee he was having some problems implementing this, and that we would perhaps talk about it. Maybe because Mr. Scott is new in the chair and was anxious to get us some response by today, this was overlooked.

Mr. Goodman: I am frankly surprised at the response of the ministry, and I urge the committee to proceed to get this recommendation implemented. It is four and a third years since this ministry agreed to implement the very recommendations made by the Ombudsman. Each year the ministry comes up with a letter indicating certain steps that it says will result in a substantial improvement over the previous situation.

I suggest to you that these steps do not implement the recommendation of the Ombudsman. The Ombudsman never suggested that confidential information be imparted in the reasons given to unsuccessful applicants. The Ombudsman appreciates the kind of information that is requested from applicants for nursing home licences. All the Ombudsman is doing with these applicants is what the select committee was doing with applicants for housing, namely, extending administrative fairness.

Mr. Bell: I do not think you have to say any more, Mr. Goodman, because it is obvious that parts two and three of the recommendation have not been addressed in the letter. I am wondering if we have enough time for Mr. White to determine through the deputy minister's office if he could send somebody, probably in his legal department, to appear tomorrow morning.

Mr. Goodman: I should say, Mr. Bell, this is the first time that I have heard that concern. There is a very easy answer to it.

Mr. Bell: We do not want to be doing anything that is going to be requiring some unnecessary or unfortunate disclosures to unsuccessful applicants. You are presuming perhaps good faith on the part of all unsuccessful applicants. If they are raising a concern, the least the committee can do is to hear about the concern and consider it.

Mr. Goodman: In the event the ministry complies with the first part, that they let the person know the criteria and the factors--

Mr. Bell: They have done that.

Mr. Goodman: No, they have not done that.

Mr. Bell: Well, my information is they have.

Mr. Goodman: What are you relying on?

Mr. Bell: The same conversation. It has been enforced for two and a half years, I am told.

3:50 p.m.

Mr. Goodman: The letter does not indicate that at all. The letter simply says that they are given a questionnaire. In any event, there is no indication that the criteria that are going to be relied on in the consideration of this particular application and that the weight attached to each factor are explained to them.

Mr. Bell: Mr. Chairman, I think that it requires an attendance by somebody of the ministry.

Mr. Philip: I wonder, for the sake of information for the committee--other bodies that make what would be called quasijudicial decisions publish reasons, do they not? Can you give us some examples of those? They still do not infringe on the confidentiality of the person's business or their ability to compete and deal with the problem of competitors. Why would this one be any different? I am not asking you to stand in defence of the Ministry of Health, but it is a question that I ask in preparation for tomorrow.

Mr. Goodman: To be clear, the Ombudsman did not recommend that the Ministry of Health publish reasons which would be available to the public as to why it chose a particular applicant for a nursing home over another, but rather he recommended that each unsuccessful applicant be informed as to why his application was rejected, after the criteria were explained to them--because that was the other part of the Ombudsman's recommendation--and what weight was to be attached to each factor in the application process. So the Ombudsman was not recommending the publication of decisions.

Mr. Philip: What I am asking you, for example, is if I applied for a liquor licence for my restaurant and I am denied, am I provided reasons for the denial?

Mr. Goodman: Yes, you are; and if you are not provided with them, then you have a right under the Statutory Powers Procedure Act to request them in writing. Then, if they are not provided to you, you have the right to seek judicial review to require them, at which point the court would require the board to provide you with these.



Mr. Philip: If I apply for a class A licence under the transport board, am I not given the reasons? As a matter of fact, they are published reasons.

Mr. Goodman: That is my understanding.

Mr. Philip: So I guess my question then will have to be to the Ministry of Health. Why would they be any different from any other body that is already doing that?

Mr. Bell: Mr. Philip, I can help. The two bodies that you referred to are quasijudicial, are governed by the Statutory Powers Procedure Act as having minimum substantive procedural requirements to provide fairness. What we are talking about here is an administrative decision--I mean purely administrative--and the requirements to inform et cetera are not as stringent as they are under the Statutory Powers Procedure Act.

That is not to say there are not obligations, because this rule of administrative fairness developing every year--almost every month now--is more and more saying that, where you carry out a statutory or legal authority of decision, there are certain minimum things you have to do. I think all ministries--and I know Mr. Goodman has much more experience in this than I--are now sensitive to this emergent principle and are probably taking steps to make sure that their own house is clean, so to speak. Is that right, Mr. Goodman?

Mr. Goodman: That is my understanding. Some are in any event, some more quickly than others, and some with a little help from the Ombudsman.

Interjection: Those that do not have privative clauses?

Mr. Goodman: Well, no. Privative clauses do not prevent investigation by the Ombudsman, as you know.

I should remind the committee as well that the Ombudsman is given the authority in section 22(3) of the act to recommend, where reasons have not been given, that they be given. That is precisely what he was doing here; he was saying, "Look, these applicants are entitled to know why their application was rejected."

He was saying that the least you should do is, before you consider the applications, let all applicants know the factors you are going to take into account, the weight you are going to attach to each of these factors, and then why their application was rejected.

That did not happen in the case that led to our investigation. In fact, the person who was recommended by the search committee was not chosen ultimately to receive the licence.

Mr. Chairman: Can we get some direction from the clerk here in terms of the sentiment of the committee that we have someone from the ministry here tomorrow from their legal department?

Mr. Bell: If possible, I would suggest to the deputy minister that the person from his legal department with whom I have already had conversation might be the most appropriate person to come, although they can bring anybody they want.

Mr. Chairman: If there is a consensus of the committee, Mr. White should call--there would be a half an hour remaining before--if it is necessary.

Mr. Philip: Would it be possible to get a page for this committee? I realize we have only one day left. It has been done. Other committees have had pages when the House is not in session. I find that on a couple of occasions when it would have been useful to have a clerk here--I recognize that he is probably out making phone calls for the committee--but there are probably other occasions when he is doing work that is really just kind of messenger work, and that it is inappropriate for the clerk to be absent from the committee for that kind of thing.

Maybe there is some way of having one of the guards, or whatever, the commissionaires sitting with the committee--it has been done by other committees--rather than having Mr. White running around on errands that really are not his responsibility.

Mr. Bell: This committee used to have a person to assist the clerk, Mr. Michael O'Neill, for the first three years, but we lost him.

Mr. Chairman: We will see what we can do for that. In this case, I think the clerk is going to have to--

Mr. Boudria: That would be for the next time we sit, since there is only one day left. Maybe for the winter sitting, we could consider this.

Mr. Goodman: Before we proceed to the next case--

Interjections.

Mr. Chairman: Order, please.

Mr. Goodman: Before we proceed to the next case, I want to underscore again my concern with the lack of action on this recommendation. This was a case where in 1977--

Mr. Bell: Which one are you talking about now?

Mr. Goodman: It was a nursing home case.

Mr. Bell: If they are coming tomorrow, would you not sooner say that to them tomorrow?

Mr. Goodman: I think that the members of the committee ought to understand that this was a case where the Deputy Minister of Health, wrote and said, "Mr. Ombudsman, we are going to implement your recommendations."

Had he declined to implement the recommendations, they would



have come before this committee in due course, and the committee would have considered them. But that is not what happened. Rather, the deputy indicated his intention to implement them. We have been following them up and including them in our appendices, and every year the deputy comes forward and indicates some further steps that have been taken.

In the meantime, the Ombudsman's recommendation has not been complied with, and I would urge the committee to make its best efforts to have this matter come to a successful close.

Mr. Bell: The next item, which is under tab five, has already been dealt with by you. It is the Ministry of Housing's response to recommendations two and three in the last report; and, unless Mr. Goodman or Ms. Bohnen has something to add, we can pass on to the last item on the agenda this afternoon.

Mr. Goodman: We have nothing to add.

Mr. Bell: You have already dealt with items under tab six. They are the Workmen's Compensation Board responses.

Mr. Chairman: We will not require your presence, Brian and Linda, for the next item, unless you want to stay.

4 p.m.

Mr. Goodman: There is only one other matter that I have given--

Mr. Chairman: Can we have some order, please?

Mr. Goodman: We will be then retiring, to leave you to consider the remaining items in private, but there was one further undertaking that I gave respecting the amendments that, if the chairman wishes me to, I can address at the present time.

Mr. Chairman: Fine.

Mr. Goodman: The committee had, I believe on Wednesday afternoon, asked me to consult the Ombudsman with a view to determining whether--if the Attorney General had no objection to the Ombudsman filing with the committee a copy of the draft bill and draft policy submission in support with this committee--the Ombudsman would have any objection.

I did so consult Mr. Morand, and he again asked me to indicate to the members of the committee that he would prefer that the committee not ask for these documents at the present time. We expect to be in the course of discussing those documents shortly with the relevant representatives of the Ministry of the Attorney General, and Mr. Morand feels that tabling the documents at this time might prejudice any discussions that will take place. I would ask the committee to kindly respect Mr. Morand's wishes in that respect.

Mr. Chairman: Any comments from the committee?

Mr. Van Horne: (Inaudible.)

Mr. Chairman: Yes, we did. The feeling of the committee is that we respect the Ombudsman's request.

Mr. Goodman: Thank you, Mr. Chairman.

Mr. Bell: Mr. Goodman, you do not have to leave. The committee is not going into private now.

We are going to deal with the resolution of May 29, 1980--

Mr. Chairman: This is not in camera.

Mr. Bell: --as to whether the committee is going to finish the job that the previous committee started in terms of hearing from interested persons and preparing a final report for the Legislature.

Interjection: I'm sorry, Mr. Chairman. Could I confer with the clerk for a moment?

Mr. Chairman: For the information of the committee, we are dealing with the resolution which was passed by the House, May 29, 1980, that this assembly request the select committee on the Ombudsman to consult with the United Nations Commission on Human Rights, Amnesty International, and the International Commission of Jurists, and others, if advisable, with a view to reporting to this assembly on ways in which this assembly may act to make its voice heard against political killings, imprisonment, terror and torture.

That was approved by the House, and the committee has done considerable work in that direction. The estimate is that it is about 75 per cent complete in terms of what they set out to do. What we are looking for right now is direction from the committee in terms of whether we will continue with that work and complete it. Also, we are looking for direction on whether we should go back to the House to have them again endorse the committee's continuing to follow along the lines of this original resolution.

Mr. Philip: Why would we have to go back to the House to have them endorse what the House already gave us permission to do?

Mr. Chairman: I will have to relay that to the counsel. We have been advised that is the procedure to follow.

Mr. Bell: There are two schools of thought. It is not within your term of reference but you were given this extra task by resolution. I agree; I do not think you have to go back. I believe the clerk's office may be of the view that to cross all t's and dot all i's, you should.

Frankly, those of you who were in the House that day when this was debated and passed, I think know that you do not have to be concerned that your colleagues in the House now are going to take umbrage that you are completing this task.



Also, your report was debated, and pages one and two were concerned. You said there that you are going to be finishing your job. Is not that the time the Legislature would have taken issue?

Mr. Van Horne: And they did not.

Mr. Bell: They did. All parties felt very strongly about the resolution and so indicated their unanimous support. My advice is, if everybody feels the way I do, to report in your ninth report that you are going to complete the job.

The problem is what you are going to ask for. You are not going to ask for an amendment to your terms of reference, because it is a special project and there may be some practical difficulties getting that amendment. I know there have been problems with the committee getting amendments on past occasions. Just finish the task, and then set in your winter schedule a time to deal with it.

For example, you have already met with Professor Walter Tarnopolsky. I think it is imperative for you to meet with the Canadian Civil Liberties Association, the Ontario Human Rights Commission, particularly since the expansion by Bill 7--Bill 7 may have some implications as far as domestic issues are concerned--the Commonwealth Parliamentary Association and the Interparliamentary Union.

It is the Interparliamentary Union, an international association, which, among other things, organized to assist fellow parliamentarians in other countries who are incarcerated for their political beliefs. There is a very strong tie.

One of the things the last committee wrestled with is how one can come forward with recommendations in the way in which this Legislature may make its voice be heard to be effective. Hearing from your colleagues in this organization might give you some real insights.

Mr. Van Horne: Where is their headquarters?

Mr. Bell: The Interparliamentary Union? I am not sure. Graham White may know. I do know but it is out of my head right now. Belgium probably. One of the neutral countries.

Mr. Chairman: That would certainly be the simpler approach to take than simply moving ahead with it, rather than going back to the House. As I say, we do have one body of opinion.

Mr. Bell: Maybe Graham would like to express for you, the reasons why he thinks you should go back to get some specific permission.

Clerk of the Committee: Yes, Mr. Chairman, it would be my view that, noble as this enterprise may be, it is simply not within the committee's current term of reference. Wide as that may be with respect to the reports of the Ombudsman or related matters, it simply does not cover this particular issue. The fact that a previous committee in a previous parliament was given this

direction by the House would not, in my view, pertain to this present committee.

Mr. Philip: But it was not within the previous committee's terms of reference, was it?

Clerk of the Committee: According to the wording of the resolution of the House, it gave to the committee the matter.

Mr. Philip: So the procedure would be that the chairman, on making his interim report when the House opens, would include in that a recommendation of this committee that we be given the permission of the House to continue the work; and the terms of reference would then state that.

Clerk of the Committee: There are essentially two possibilities. One is a report to the House. It would not necessarily have to be a major report including the matters just discussed; it could be a special report. Were that report to be moved for adoption and adopted by the House, that would be all that would be required. Or the terms of reference could be amended in the usual manner.

Mr. Philip: By the government House leader introducing a motion.

Clerk of the Committee: By motion of the government House leader.

Mr. Philip: The simplest solution would be for the chairman of the committee to talk to the government House leader and ask him if he is prepared to do that, in which case he would report back to the committee, and we do not have to consider it any further at that time. As long as we get the word of Tom Wells that he is going to do that, we expect he would do that if he tells the chairman that is what is going to happen.

4:10 p.m.

Mr. G. I. Miller: Do any of the new members have any thoughts on the validity of this and how strongly we should be pushing for it? I would like to hear some comments.

Mr. Shymko: I could certainly express my opinion on this.

I do feel that we have been requested by the Legislative Assembly to study a need that apparently exists, to look into this area of concern. I know that our parliamentarians, as members of international bodies, meet with other parliamentarians who deal with cases that are not limited in a jurisdictional scope of province or federal. We do not make a distinction as members of the Commonwealth Parliamentary Association whether you are a provincial or federal MP.

There are cases that are discussed of humane and compassionate and human rights concerns by our members. Already we have an international forum for our elected members of the



Legislature where some of these concerns are discussed, where they are debated, where recommendations and resolutions are made.

I think it is a contradiction that we do not have, jurisdictionally, some mechanism within our government or our structure so that our members can express or hear these concerns. As a matter of principle, there is nothing wrong in creating some format, be it a committee or be it this select committee, or mechanism where these concerns certainly will be expressed and where our Legislative Assembly can communicate concerns either through the Ministry of Intergovernmental Affairs or directly to External Affairs, in other words, to the federal government, which in turn would communicate this to other bodies.

This is where the whole problem comes in as to how this should be approached. Can we deal, for example, directly with international organizations? Do we have or can we obtain such a mandate? Or do we have to deal only, according to the constitution, through the federal government? Can we go over the head of the federal government? Perhaps we could deal with international human rights organizations but not with foreign states. That may be the distinction.

Secondly, can we in some way make representations? There is an NGO format, the nongovernmental organization of the United Nations. But I do not think we could have any format of dealing directly with the United Nations. That would certainly be overstepping the constitutional aspect. I know Quebec in some respects has made representations in the area of human rights. Maybe we could explore how that province has dealt with this area.

My question would be whether this committee should take on a permanent function of acting as a liaison with these various bodies. Do we become almost--I can think of a parallel at the federal level, of a parliamentary committee dealing with human rights, I think it is the Helsinki accords committee which acted as a subcommittee of the standing committee on external affairs, in other words, a subcommittee that held hearings and witnesses appeared and organizations expressing their concerns. Perhaps the idea is to make out of this committee some kind of a framework where such appeals or such presentations would be presented.

The other area we should debate is whether we limit this. The actual motion says, "to explore ways in which this assembly may act to make its voice heard against political killings, imprisonment, terror and torture." It does not say whether these would be killings, imprisonment, terror, and torture domestically or outside the country. My understanding is that it is exclusively in the international sphere rather than the domestic.

I know we have a human rights code, and we have a human rights commission, which I am sure would be looking at any infringements in that area. I would imagine this would be a mechanism to hear complaints that are not domestic but international in nature. I am not too clear on this. I would hope I would have some clarification from our legal counsel in this area. But I basically support the principle, and I think it would be advisable to complete our research and maybe listen to more of

these organizations. I am sure there are many more bodies besides the three listed and the ones that were heard by the past committee. What remains is the form that this should take. We are talking about a mechanism or a form, and I think it is the second step that should be considered.

As the clerk said, we may report to the House that we have agreed on the principle of this and that we would like to seek the recommendation of the House as to whether we can proceed in the formulation of the mechanism itself.

Mr. Chairman: We have a bit of a disagreement on that. Is there a consensus in the committee that we should be completing this work? I think there is.

Mr. Philip: Just a couple of comments on that, Mr. Chairman, because I understand somebody is waiting for me on the phone. Mr. Shymko's first question is surely the type of question which the committee was set up to answer and, therefore, it is part of the terms of reference, if you want, or the original resolution.

The second point is that I don't see any limiting of it to purely external. There is nothing in the resolution that indicates that.

Last, it seems to me that experience has shown that any body, particularly if it has some political voice, at any level that deals with the human rights issues, creates a pressure in certain countries. We are seeing evidence with work that some of the people in my party have done on problems happening in Chile.

Hopefully, as a result of some of the things that Mr. Renwick and I have been involved in, and other people of other political parties have been involved in, there is pressure now in Yugoslavia to look at some of the atrocities that I think are happening against parliamentarians in that country. I think there is reason, whether or not we answer. We even solved the problem that Mr. Shymko poses in his first question. The mere act of doing it is a worthwhile procedure, and we should go on with it.

Mr. Shymko: I just wanted to ask Mr. Philip a question. The mere act of doing it is worthwhile, but do we proceed with a mechanism? Is this body--

Mr. Philip: This body is set up to try to find a mechanism. I thought that was the original intent of the resolution and that is what we are about. In a sense you are asking a question that is the question we have been asked to deal with, and that is part of Mr. Renwick's resolution.

Mr. Andrewes: I find Mr. Philip's statement very accurate. I think we have a clear mandate, and our job is clear to find that solution.

Mr. Chairman: Okay. We have a consensus that we should proceed and complete the work. The second thing is whether we should go back to the assembly for approval to continue or just



move ahead, and we have a bit of a division of opinion on that one.

Mr. Bell: Could I give you a perception and a practical solution? It has been my experience--I have been involved with subcommittees since 1973--where you have a matter like this treated the way it was in the previous parliament by the resolution, the reaction you are going to get from your colleagues if you ask for permission is, why are you asking this?

My practical suggestion to you would be to tell them that you have considered the resolution, the unfinished work and the eighth report and you have decided to complete the task. That joins issue with the House on the debate. If you get an expression at that time or receive word from your respective House leaders that this isn't something they want you to do, you are going to be governed accordingly. I have a \$100 bill that says not one word will be spoken of it.

4:20 p.m.

Graham is right. Select committees expire when parliament dissolves and, strictly speaking, this is a new legal entity and thereby requires a new term of reference and perhaps new resolutions. He is advising you of that for an important purpose. I guess I am just saying from a practical point of view I don't think anybody is ever going to raise an eyebrow. I think those of you who have been around here longer than I have know that too.

4:20 p.m.

Mr. Van Horne: In the light of what Mr. Bell has said, would it not be proper for you as chairman to let the House leader, Mr. Wells, know that you would like to make an interim report with a statement indicating that we plan to carry on? If Mr. Wells, in his wisdom and with his experience, feels it would be better to come from him, he will certainly tell you in very short order. I am sure he would go ahead and see that he himself introduces a motion, but I suspect, as Mr. Bell has indicated, he would likely say, "God speed to you," and therefore your report could be made early and simply when we come back in October.

Mr. Bell: That's a good suggestion. I think it could be applied to all three House leaders. Just say, "Look, page one of our next report is going to say we are going to carry on the task and complete it; is that okay?" If it's not, they will tell you right there and then you will have to go back and change page one.

Mr. Chairman: Are you in agreement with that?

Mr. Philip: (Inaudible.) If the clerk is happy, then I am happy.

Mr. Bell: Graham might not be happy.

Mr. Chairman: Before we break for the day, I would just like to talk about what we have left to do. John, do you think we can handle it all tomorrow? I am concerned with the fact that we

have witnesses coming tomorrow morning and the time that is going to take.

Mr. Bell: We have one for sure, don't we, Graham, and I would be surprised, frankly, if we get anybody from the Ministry of Health on that second one. I would think the deputy minister might put a hold on everything. He is a new deputy minister, and I think in fairness to him he is going to want to see what is going on. In any event, Mr. Chairman, I would be surprised if you are more than half an hour with each of them. One is for clarification and two is really to find out what has taken them four years.

Mr. Chairman: The other matters you have are recommendations denied.

Mr. Bell: The other matter, when you finish the agenda, is to make a decision as to how and to what extent you want to deliberate the report tomorrow. The practice has been that you deliberate in camera, with a couple of exceptions, the various items in the agenda and to arrive at a consensus which I will record, take away with me, build a text around it, and come back with you later on in the fall and finalize it. I think there is enough time.

Mr. Van Horne: Mr. Chairman, could I raise one other matter of business and at least plant the thought in your mind, if not for some discussion? The first day that we met, just in passing conversation with Mr. Miller, we wondered if it might not be a worthwhile exercise to see one of the regional Ombudsmen.

Mr. Chairman: I haven't forgotten that, Ron. I have it on my agenda, travel plans, to talk about that tomorrow; that is one of the items we are going to be discussing.

Mr. Philip: Mr. Chairman, in keeping with the policy we agreed on on the first day, there is certain correspondence that was distributed that I think we should now have the clerk collect.

Mr. Bell: Yes, he is taking them back.

Mr. Van Horne: I am leaving my book; he can help himself.

The committee adjourned at 4:23 p.m.





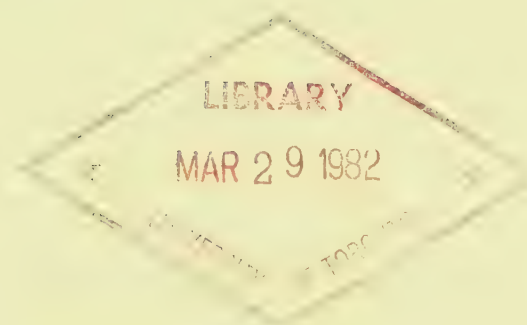
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SELECT COMMITTEE ON THE OMBUDSMAN

OMBUDSMAN'S EIGHTH REPORT

THURSDAY, SEPTEMBER 17, 1981

Morning sitting





SELECT COMMITTEE ON THE OMBUDSMAN

CHAIRMAN: Runciman, R. W. (Leeds PC)  
Andrewes, P. W. (Lincoln PC)  
Barlow, W. W. (Cambridge PC)  
Boudria, D. (Prescott-Russell L)  
Cooke, D. S. (Windsor-Riverside NDP)  
Dean, G. H. (Wentworth PC)  
Eves, E. L. (Parry Sound PC)  
Kells, M. C. (Humber PC)  
Miller, G. I. (Haldimand-Norfolk L)  
Philip, E. T. (Etobicoke NDP)  
Shymko, Y. R. (High Park-Swansea PC)  
Van Horne, R. G. (London North L)

Clerk: White, G.

Counsel: Bell, J.

From the Office of the Ombudsman:

Bohnen, Ms. L., Director of General Investigations  
Goodman, B., Counsel and Special Adviser to the Ombudsman

From the Ministry of Health:

Bain, W., Executive Director, Institutional Division  
Boehm, A. E., Director, Institutional Operations Branch  
Campbell, M. H., Legal Services Branch  
Murray, Dr. E. J., Director, OHIP Professional Services

SELECT COMMITTEE ON THE OMBUDSMAN

Thursday, September 17, 1981

The committee met at 10:15 a.m. in committee room No. 1.

OMBUDSMAN'S EIGHTH REPORT  
(continued)

Mr. Chairman: Members of the committee, initially we are going to deal with the letter from the Ministry of Health. We have with us this morning Dr. E. J. Murray, who is the director of OHIP's professional services branch. Welcome, Dr. Murray.

A number of concerns were raised by the representatives from the Ombudsman's office yesterday primarily regarding the implementation of the committee's recommendation in the eighth report. There is some question as to just how that is being implemented.

Do you want to carry it from this point, John?

Mr. Bell: Thank you, Mr. Chairman.

Dr. Murray, to assist you and bring you forward to where the committee left off yesterday: It referenced and read from Malcolm Gibson's letter to me of September 1, 1981, which is the ministry's response, if you will, to the committee's first recommendation in its eighth report, which the minister indicated in the House on May 14 he accepted and intended to implement.

In particular, if you have the letter before you, you will see that in the second full paragraph on the first page Mr. Gibson refers to instructions to you and says that you have subsequently taken such steps as to implement the recommendation, and he so records.

Mr. Philip: Some of us don't have the reference in our binder. Can you give it to us?

Mr. Bell: It's B(b)(1). Has everybody got B(b)?

Mr. Chairman: It's a letter dated September 1 addressed to the counsel.

Mr. Bell: It's the last document in section 1.

Dr. Murray, yesterday Ms. Bohnen on behalf of the Ombudsman referred the committee to a couple of conversations she had had. I think, in fairness to her, she didn't state to the committee that in her opinion the recommendation hadn't been implemented at all or completely, but there were a couple of concerns that she had about whether the notification that was to be given to people against whom an adverse decision had been made were receiving the type of information set out in the recommendation concurrently with the notice of the decision or, in fact, at all unless they



came back and indicated displeasure.

In full fairness to her, however, I think we should give Ms. Bohnen an opportunity to restate that which she advised yesterday, and then give Dr. Murray an opportunity to explain or clarify.

Ms. Bohnen: My concern was generated in part by a letter the Ombudsman had received on July 3 of this year from Mr. Gibson in relation to code R991 and claims in which he said--and this is a quote of the relevant part of the letter:

"For these cases in response to the recommendations made by the select committee on the Ombudsman arising out of your eighth report we have recently introduced administrative improvements so that claimants whose claims have been reduced or refused are notified in writing as to the reason for our action. If this judgement is disputed then they are notified of the appeal procedures available to them."

My concern from that was as to the timing of the notification of the right to appeal. I took it up with Mr. Gibson in conversations, and he certainly understood what the concern was, that I wasn't informed of any administrative changes or the administrative position OHIP was taking in response to the concern. That's mainly what I expressed to the committee yesterday: the timing of the notice; and I also inquired as to the class of individuals who will be receiving this notice: whether it was all claimants who were refused under the code or some lesser group of them.

Mr. Bell: Dr. Murray, do you wish any further explanation?

Dr. Murray: The directive came from the general manager to myself, quoting the recommendation of the Ombudsman's report. I was asked to arrange to implement it. That was as of May 21, 1981. At a meeting of our medical consultants, which we have periodically, maybe every couple of months, this was discussed and it was explained to them that this is what was going to happen. I'm afraid I was chastised for the wording that was in that letter, because it was at my instigation that it read that way.

Mr. Bell: Which letter are you referring to?

Dr. Murray: The one Mr. Gibson wrote.

10:20 a.m.

Mr. Bell: A truly courageous man: one who will disclose chastisement.

Dr. Murray: But anyway, he was very intimately involved with that, as I have been over a number of months, in trying to get this thing straightened away. But anyway, I guess it was in June that we discussed it at a medical consultants' meeting. I indicated to them at that time what the Ombudsman's recommendation was.

My interpretation, as I say, at that time was that we call the shots. If there is a dispute about it then there is no question about all of them going the route of the appeal mechanism that is available to them. However, as I say, I was chastised because of my interpretation, and on August 17 I prepared a summary of the memo, a copy of which I circulated today.

Mr. Bell: Just stopping you there, sir: You have provided us today with the memorandum you just referred to. Members all have a copy before them.

Dr. Murray: I think that that is explanatory.

Mr. Bell: Would you just take the committee members through that and indicate where and how you consider this to be full compliance with the recommendation?

Dr. Murray: The second paragraph deals with that. When a claim involving R991, which is a procedure not available in Ontario, is refused by OHIP because of a question of medical necessity--in other words, if we say that this is experimental or that it's this, that or the other thing and for that reason is not an insured service--at that time we will tell the claimant that if he does not agree with this he has the right to appeal to the general manager, and he in turn will go to the medical eligibility committee.

The medical eligibility committee is a committee of impartial positions that are appointed by the minister to look over these cases and rule as to whether they do fit in as an insured service. If they say it is, we then automatically pay; if they say it isn't, then we notify the subscriber that it has been referred to the medical eligibility committee and that they agree with us that it is not an insured service, but that he has 15 days in which he can then appeal that decision to the health services appeal board. He will be notified at the same time as he is given the decision of our medical eligibility committee. If he wishes to send it to the general manager he in turn will send it to the health services appeal board.

In the event that the other aspect of these claims is addressed, and that is that if the fee that is submitted by the subscriber is reduced because we apply item three above--in other words, it is the usual and customary fee for that particular area and it is less than the fee that has been submitted by the out-of-country physician--then we will notify him that we have reduced it and for what reasons. If he does not agree with our decision then he has to appeal to the health services appeal board directly, or the general manager will do it for him.

As far as following that, if the authorities' decisions are sent out under the date of August 18, which was the day after this one was written, Mr. Gibson indicated to his administrative assistant that we should set up a procedure. They said, "Would you please work with Dr. Murray's staff to establish a procedure to ensure that whenever a claim for out-of-province medical services for a procedure not available in Ontario is refused or reduced I review it before the final letter is sent?"



We have been following that protocol in the event that we do have claims that are either reduced or refused. The general manager, myself and the chief of medical adjudication, who is a physician in my branch who usually does the adjudications, get together and decide what our answer is going to be (inaudible).

Mr. Bell: How are applicants informed of their rights of appeal or reconsideration? In writing?

Dr. Murray: In writing, yes.

Mr. Bell: Is it a ministry form that has been prepared?

Dr. Murray: No, an individual letter outlining the reasons why their claim has been reduced, or outlining why their claim has been refused.

Mr. Bell: That would apply to all such decisions that are referenced in these paragraphs; is that correct?

Dr. Murray: Yes.

Mr. Bell: I do not have any further questions, members of the committee.

Mr. Barlow: I have a question, Mr. Chairman.

Are R991 and R990 the same? The letter refers to R990.

Dr. Murray: In the year for 1981 schedule of benefits, we split them. Before, in 1980, the code number R990 was introduced to cover these situations. It also did cover, and now exclusively covers, those procedures that are not specifically mentioned in this schedule of benefits but are similar to but not the same as the items in the book; and, therefore, individual consideration will be given to those procedures which lie outside of the specific definition in the schedule of benefits.

So we created R991 to deal with this particular problem, which is the out-of-province, not-available-in-Ontario situation.

Mr. Barlow: So the business of notifying your clients came in as of August 17; is that right?

Dr. Murray: No, it was instituted on May 21.

Mr. Barlow: I had an inquiry not too long ago; I cannot remember the exact date, and I would like to check back. It was a situation exactly like this, involving one of my constituents. I should just like to check back whether they did receive a notification of the opportunity to appeal. I'll do that; that is quite apart from these hearings.

Dr. Murray: Sometimes those applications come in, and it can take a matter of a month or two before a decision really is made because of checking several things. First of all, is it available in Ontario? Secondly, what is the usual and customary fee in that area? These are the things that do take time.

Mr. Barlow: Thank you.

Mr. Boudria: Mr. Chairman, I wonder if Dr. Murray could tell us about number three, "We shall pay the usual and customary fee for that geographical area." How do you establish what is a customary fee for some service that you may get outside the country, or even on another continent, and it is not available here? How do you establish what the customary value of that service is if it does not exist here already?

Dr. Murray: Ninety-nine per cent of the time, these procedures are in the US, and if they are, we usually will contact Blue Cross or Medicare or Medicaid in that particular area.

The fees vary from New York to California; so--

Mr. Boudria: I am sorry; I am having a very hard time hearing you.

Dr. Murray: I say, a procedure that is done usually is in the US; we have not run into any that have been done elsewhere as yet. What we would normally do is to phone Blue Cross in that area, and find out what the usual and customary fee is that they pay for that procedure in that area.

Mr. Boudria: Supplementary to that, I am just thinking of the case that was very well publicized lately about this certain gentleman who had a rare skin disease and had to go to Germany, for instance, to get a kind of treatment. He was completely healed by this treatment, by the way, and it was not available anywhere else in the world except there.

How do you establish the customary value in circumstances like that? It must be very difficult to do if it does not exist any place else.

Dr. Murray: Dealing with that particular case, that particular treatment is being given by a Mr. Pavel Kozac, who is a biochemist and who is a defector from Romania to West Germany. When that first arose on the scene, we made inquiries through the German embassy and through External Affairs in Ottawa. I also wrote directly to the medical establishment in West Germany to find out whether anything had been published in the scientific journals or medical journals there, whether he was known as a physician.

10:30 a.m.

The investigations turned out that he is not a physician; he is a biochemist. But, under the statutes that were set up in 1939 under their great leader at that time in Germany, if someone applied to be a "healer" and it could be proven that he did no harm--whether he did any good or not was another question--he was given permission to practise his art.

Under our health insurance plan, of course, we pay for physicians' and practitioners' services. Dr. Denby from Oakville made a trip over on Sunday and back on Tuesday. I spoke with him



yesterday, and he said it works; it has worked very well for Tony Degabriele.

But so far he is trying to patent the medications that he is using. And I understand--he could not communicate very well, because Mr. Kozac does not speak English; he speaks only Romanian and German--that there is a possibility--and I say possibility; I guess it is not in quotes--that he may be influenced to come over and reveal what his treatment is.

Interjection.

Mr. Philip: So are you saying that you will pay for it or that you will not?

Mr. Chairman: One person at a time.

Mr. Van Horne.

Mr. Van Horne: I was asking the doctor if there was any validity to the news reports that suggested that the gentleman we are referring to was trying to come to Canada to establish a "practice" here in Canada.

Dr. Murray: The rumours are that he has been offered an appointment at the University of Saskatchewan and somewhere else--I cannot remember where, but it is in the west; I am not sure if it is Alberta--but, as I say, they are rumours, so far as we know, because of the communication problem with Mr. Kozac. And the only other contact I know is Dr. Denby. So that is still--

Mr. Van Horne: Mr. Boudria asked about a gentleman from eastern Ontario. Is there a young boy from southwestern Ontario who is being treated over there too?

Dr. Murray: I believe that there are, at the present time, four or five there from Ontario.

Mr. Chairman: I wonder if we could deal with the specific item. I do not think you got an answer to your question.

Mr. Boudria: No. There were two questions I would like to answered. First of all, that man is recognized in Germany, obviously, as doing a medical service. You are saying that you do not recognize him as being a physican; is that right?

Dr. Murray: That is item one.

Mr. Boudria: Secondly, then, would you or would you not not pay for some or part of the service?

Dr. Murray: No.

Mr. Boudria: No. Even though he is recognized in his country as being--well, a healer or a man of medicine, if you wish. He is not a doctor by your definition, but obviously he is a man who heals by theirs, because he is licensed to do what he does.

Dr. Murray: The medical establishment in Germany does not recognize him as being a medical person. And the treatment as such has never been revealed to anyone else other than this particular one individual who knows the treatment; therefore, it would fall into the classification of being an experimental treatment until such time as we could prove, or it could be proven, not necessarily here, but anywhere, that the treatment was without deleterious side effects, either short-term or long-term. Then it would be accepted.

Mr. Philip: I have one short supplementary, and I do not want to turn this into estimates, because I realize that is not the purpose of this committee. But in some jurisdictions in the US it would be an osteopath who would be the medical practitioner. They are not recognized in Ontario. In some of the small communities they are the only medical practitioners.

Would you recognize treatment by an osteopath and pay under OHIP for those services?

Dr. Murray: At the present time our policy is to pay osteopaths the general practice rates, yes.

Mr. Philip: But in Ontario would they receive the same general practice rates?

Dr. Murray: No.

Mr. Philip: Therefore, if I happen to go into the United States, I can be treated by an osteopath on OHIP, but I cannot get that same treatment in Ontario by an osteopath?

Dr. Murray: True.

Mr. Philip: Does that not strike you as a contradiction?

Dr. Murray: No.

Mr. Philip: It doesn't?

Dr. Murray: No.

Interjection: We could get into a long discussion on this.

Mr. Chairman: Yes. I wonder if we are not getting off the track here. We are dealing with a specific area of concern from the Ombudsman's office. We have heard the doctor's explanation of how they are trying to implement the recommendation--

Mr. Philip: I may have opened up a new area of investigation for the Ombudsman. If I can find one or two people--

Mr. Chairman: Perhaps we could deal with that at a more appropriate time.

Ms. Bohnen, I just wonder if you would have some response to what the doctor said this morning.



Ms. Bohnen: I have one question for Dr. Murray. Can I take it that, if a claim is reduced because in OHIP's view the service or procedure was available in Ontario, that too would be viewed as an appealable issue and that the claimant would be notified of his appeals?

Dr. Murray: If the service is specified in the schedule of benefits, then we are basically not reducing our claim; therefore, there would be not be an appeal.

Ms. Bohnen: Either I am not understanding your answer or we are talking about different things. My question was, if there is some question as to the availability of the procedure in Ontario and the claimant sought the service outside of Ontario because he or she was of the view that it was not available here, but OHIP was of the view that it was available in Ontario, whether or not it is specifically prescribed in the schedule of benefits, would that person whose claim has been reduced be advised of his appeals?

Dr. Murray: I would say no, because if the procedure is in the schedule of benefits it is available in Ontario and therefore R991 does not apply.

Mr. Bell: That is an interesting point, doctor. The memorandum that you have just distributed to us, August 17, 1981, says where the claim is paid--oh, I see; that does not mean a claim disallowed at zero.

Mr. Goodman: I am wondering if perhaps Dr. Murray can explain how simply by virtue of the fact that it is contained on the schedule that ipso facto is proof that it is available in Ontario. I do not quite understand that. Perhaps he can explain it.

Dr. Murray: If the method by which items do get into the schedule of benefits and how the items in the schedule of benefits are deleted if they are being done in Ontario, usually the practitioner who is doing that procedure makes an application through the Ontario Medical Association, or through his section, for an introduction of that item in their fee schedule, which we normally will follow and introduce those items in time or immediately. Therefore, if a procedure is being done in Ontario, it will eventually end up in the schedule of benefits.

Mr. Goodman: If the procedure were being performed in Ontario and were included in the fee schedule, may I assume likewise, should the procedures stop being performed in Ontario in the event that the person who formerly performed it no longer performs it or leaves the jurisdiction, that there would be a time when it would still be on the schedule but no longer being performed in Ontario?

Dr. Murray: That could happen, but in that interval we would then make an inquiry through the respective section of the Ontario Medical Association as to whether anyone was performing that procedure; and if they said no, then it would automatically fall under R991.

Mr. Goodman: I am not denying that. But, on the other hand, there may be a time lag between a situation where the service was being performed in Ontario and the time when it is deleted from the schedule because it is no longer being performed in Ontario.

10:40 a.m.

Dr. Murray: That could happen.

Mr. Goodman: Do you not think under those circumstances it might be appropriate, notwithstanding the inclusion in the schedule, to provide claimants with the right of appeal on the basis of nonavailability?

Dr. Murray: If, in fact, it is not available.

Mr. Goodman: That is precisely what I am saying.

Ms. Bohnen: Mr. Chairman, the concern which led to my question was that the persons who sought the service outside of Ontario, one would think did so because they were of the opinion that the service was not available in Ontario. If OHIP's position is that, "No, it was available in Ontario and therefore it is not on R990; therefore it is not a claim for which we have to give you notice of your appeal," it seems to me that then OHIP is predeciding the very issue which one would expect the appeal board to be in a position to decide, and that therefore the notice should be given to those people as well.

Mr. Bell: I thought I knew where you were going until that last comment. Are you saying that the decision you have now spoken about, OHIP's decision not to make any payment because the procedure is available in Ontario, is, in effect, a claim under R990, or now 991, which is refused and therefore, within the terms of the committee's recommendation, such a decision must be accompanied by notice of appeal procedures?

Ms. Bohnen: First of all, Mr. Bell, it is my understanding--Dr. Murray can certainly correct me--if these people have the service performed outside of Ontario and OHIP feels it was available in Ontario, they will still pay some portion of it. It is just a question of reducing the amount which they will pay.

But to answer your question directly, yes, I think any person who makes a claim for repayment for a service performed outside of Ontario is making a claim under what is now R991 and in order to comply with the select committee's recommendation all of those persons should be notified of their right to appeal.

Mr. Goodman: And given Dr. Murray's latest admission that there is going to be a time lag between the time when a matter was formerly available in Ontario and therefore included in the schedule, and the time when it is deleted from the schedule, surely that right of appeal should be given so that the person can claim before the appeal board that the service was in fact not available in Ontario?



Mr. Bell: I understand and right now I do not want to get into specifics, but I think that is an example of the whole. What do you have to say about that, Dr. Murray?

Dr. Murray: We have run into several situations where, to take an example, we have a particular physician in Ontario who sees a procedure that needs to be done, so he says, and in his opinion the place where that can be best done, because maybe the particular individual did the initial work on it, introduced it has been doing it for 10 years or 20 years or whatever it might be, and he indicates to the patient that the best place to have this done in the world is in Leningrad. He says, "You could have it done at Toronto General Hospital, but the best guy in the world is in Leningrad." Are we going to then say that we will pay the fee that is charged by the physician or the surgeon in Leningrad because the patient wants the best?

Mr. Bell: Okay, hold that thought, hold that example, it is a good one. Let us say that in OHIP's opinion the surgical procedure is available at Toronto General Hospital. If the person for whatever reason said, "I want to go to Leningrad," and submits a claim for payment, OHIP, for reasons just stated, denies that payment--

Dr. Murray: We do not deny the payment. We would pay it at the rate that is in the schedule of benefits.

Mr. Bell: So you reduce the amount of the payment from that which the applicant claimed for, is that right?

Dr. Murray: Yes, but we have not reduced the payment as specified in the schedule of benefits.

Mr. Bell: No, but have you paid a lesser fee than submitted by the subscriber?

Dr. Murray: Yes.

Mr. Bell: Then in accordance with this memorandum you would notify that person at the time of notification of the decision that he may appeal to the health services appeal board.

Dr. Murray: No, we would not, because the procedure is available in Ontario and therefore does not lie in the category of R991.

Mr. Bell: Then we do have a difficulty. I am indebted to the Ombudsman's representatives for drawing this to the committee's attention.

The recommendation of the committee says: "The Ministry of Health give prompt notice to all persons whose claims for benefits under R990"--now R991--"are in the future refused," and then full particulars, et cetera. There are no distinguishing features or categorizations of the type of claims, or the type of refusals. It was just stated for obvious reasons to catch all claims under that code number, and all refusals made under that code number.

If my memory serves me correctly, one of the two complaints that the Ombudsman investigated under this category was the very situation we have talked about, where if a person went south of the border for a procedure, submitted a claim and OHIP took the position that that was available in Canada or Ontario and thereby reduced to the OHIP fee schedule, it seems to me there may still be a gap between the recommendation and the implementation.

Dr. Murray: As I say, basically, if we are to interpret that R991 deals with those procedures that are not available in Ontario--in other words, if we have a gentleman in Toronto who wants to have his hernia repaired, and he wants it done with anodized steel wire instead of going to Shouldice and the only place he can get anodized steel wire is in Buffalo and it is going to cost him \$1,000 rather than \$250.

Mr. Bell: All right. Let us not deal with the easy example, because I think everybody in this room would agree. Let us deal with something that is on the horizon such as a pancreas transplant, and a person goes down to a clinic in the United States, in Texas, and undergoes a pancreas transplant, and OHIP takes the position: "That is available somewhere in Ontario. There is a team working on it and, therefore, once we determine what the fee would be, we are only going to pay that fee." Should not the person who has gone to Texas have the right at least to ask for a review of the original decision that it is available in Ontario?

I deliberately chose that example because of the fact there is about to emerge an operative procedure in pancreas transplants in Ontario. My information is they may be already taking place in some jurisdictions in the United States. That is a narrowing in on a specific complex procedure. Respond to that, sir, if you like.

Dr. Murray: I would say that if the procedure is available in Ontario, is being done in Ontario and the patient chooses to go outside of the country to have that procedure done then he does not fall under R991 and, therefore, the appeal procedures are not notified to him immediately.

Mr. Bell: Okay, just to sum up, in this appeal procedure and notification that we have been talking about, the issue whether or not there is an available procedure in Ontario will never be subject of the appeal.

Dr. Murray: No.

Mr. Cooke: I come across this quite often in Windsor. I have a number of infant cases that I have dealt with over the last few years, some of which have gone to the Ombudsman.

What would happen in the case of a child--and this has happened--who cannot get the service in Windsor and has to use the Detroit facilities? The facilities are in London, Ontario, but the child's life would be in danger by transportation to London. Would that person be subject to an appeal under this regulation?

Dr. Murray: What we normally do with those cases, and have done in the past, is that because of the emergency nature of



the situation we will pay the hospital bill at 100 per cent, but the assessment and the care given in the hospital visits made by the physicians in Detroit are paid at the same rate as they would be to a physician in Windsor.

10:50 a.m.

Mr. Cooke: I know. That is why they have gone to the Ombudsman, and that is why we have never been happy because there is not the choice. In fact, in one case there was a \$5,000 charge to the family above the OHIP fee schedule. What I asked is, is that subject to appeal?

Dr. Murray: No.

Mr. Cooke: Because the procedure is available in Ontario?

Dr. Murray: Not necessarily, but the assessments, the procedures, the visits and what have you that were done are available in Ontario if they are being done by physicians in Ontario.

The problem as I see it, philosophically, is if you are going to pay \$35 a day for hospital visits for physicians in Detroit, and you are going to pay \$8 for daily hospital visits for physicians in Windsor, I know where I would be practising. It would not be in Windsor.

Mr. Cooke: I understand that, but I also understand that families have no choice but to go to Detroit or lose a child.

Dr. Murray: I think there are extenuating circumstances, yes. But as I say as far as the appeal mechanism is concerned, as I understand it, the general manager has not reduced the payment for that assessment as dictated by statute.

Mr. Shymko: I wanted to refer to the factor of awareness or ignorance on the part of an individual whether or not such a practice, procedure, service or treatment is offered in Ontario. It would be no surprise to me that many individuals are not sophisticated enough perhaps to know of a specific specialized treatment or procedure offered here. In many cases his own family doctor or practitioner may not be aware that such a service is offered, and on the basis of this ignorance he may go and seek such treatment outside of this province or this country.

I just wondered whether or not that factor of awareness is guided in your decisions in many of these cases, including the question of the best treatment available.

If you are in a critical situation of life or death, human nature dictates that you will seek the best treatment available. Very often, such a statement made by a family physician will guide that decision and the victim may be suffering undue financial burdens in being guided by that suggestion. I just wondered whether these factors become relevant in guiding some of your decisions.

Dr. Murray: What we have done about that is that when this question was being discussed approximately a year ago now, and we established our criteria for R991, a bulletin was circulated to every physician in Ontario indicating that if a patient is going to be referred to anyone outside of our jurisdiction we would have a referral by that physician and have prior approval by OHIP, so that we would be given the opportunity to indicate to that person what financial problems he may involve himself in.

In other words, to take an example, if we have somebody who is trying to build a swimming pool in Texas and is charging \$8,000 for a procedure, and the usual and customary fee in that area is \$4,000, we would indicate to that particular individual when they were asking for approval to go to Texas that we would be prepared to pay approximately \$4,000 for that procedure because that is the usual and customary fee.

Mr. Shymko: Would you suppose that there may be cases where the physician, although he has been notified by you of that particular aspect of informing a patient, may not have done so? The onus, apparently, is on the physician to inform his patient of that. The patient does not know that.

Dr. Murray: We try to educate the profession so that they will act in the best interest of their patients. We have stressed this. It is in the best interest of his patient to have this approval and knowledge before.

Mr. Shymko: I just wonder whether the government itself should perhaps, in the information that it publicizes in terms of advertising the services of OHIP, stress this factor to the population at large that, in case you do seek treatment outside of the country that--I just wonder whether most people are aware of that.

Dr. Murray: We are trying to address that in our general guide which is to be published and updated periodically, once every year or two years.

Ms. Bohnen: The concern we have over the Ontario health insurance plan's apparent position to this day that, where the issue is one of availability in Ontario, it is not considered appealable, stems from the frequency and number of situations in which the issue arises. I think members of the committee have mentioned that.

But just to put a bit more reality into the discussion, the issues which all come down to availability in Ontario, which we see most frequently, is the question of whether the procedure is available in terms of time, although geographically speaking it may well be available; secondly, the awareness of the availability of the procedure to the claimant so that, can it truly be said that the procedure was available to them?

Third, something which has not been mentioned yet, the characterization of the procedure. OHIP may well characterize the surgery, for example, as item A, B, C, D available in Ontario



whereas the patient and the out-of-country physician may say, "No, it was something different." I would suggest all of these are issues which the committee intended in its recommendation to be subject to appeal.

Mr. Boudria: I think the whole matter of whether something is reasonably available in Ontario should be appealable, not just available in Ontario.

For instance, if a constituent of mine living in Hawkesbury needs a procedure that is available in Montreal and it is rather urgent--Montreal being only 45 miles away and Toronto being 300 miles away--that patient should be able to argue that service was not reasonably available. Although your schedule may say that it was available, it may not in fact, due to certain circumstances, time, and so on and so forth, be reasonably available in Ontario for him.

By the same token, somebody who lives in Kenora who requires a surgical operation to be done that is available here in Toronto and is also available in Winnipeg, only a short distance away, could argue the procedure was not reasonably available to him in Ontario. I am not saying that in all cases OHIP should grant maybe 100 per cent of the fee schedule, but at least when those people are not happy with the result, there should be a mechanism by which they can appeal those decisions.

What you are saying, doctor, is the minute it is in your schedule, that constitutes a nonappealable decision. The fact that it is in your schedule, whether it is or it is not or was reasonably or unreasonably available, is all inconsequential. The minute it is in your schedule, it constitutes being available in Ontario and therefore cannot be appealed by anybody at any time. Surely, you must admit there is something wrong with that.

Mr. Goodman: Mr. Chairman, I am wondering if perhaps Dr. Murray should not be provided an opportunity to indicate to the committee and to our office what problems, if any, there would be in providing an appeal to these people.

Mr. Bell: We have already been told by Mr. Gibson, I think, a year ago that the real problem is the number of appealable decisions or the number of requests for appeal that will develop. Mr. Gibson indicated some real concern with an ability to cope with that. Am I correct, Dr. Murray?

Dr. Murray: Yes.

Mr. Bell: Can I just ask a couple of questions?

Mr. Goodman: I am wondering, before you proceed, Mr. Bell, what proof there is of that.

Mr. Bell: I am not sure I am worried about whether there is proof. I have the general manager's statement that they are worried it is going to increase an administrative work load.

Mr. Goodman: I would like to state for the record that

we are concerned that there be proof in the Ombudsman's office. The question of fairness versus efficiency, clearly there should be an onus on OHIP to show there would be a serious problem with efficiency and provide proof positive of that before we ride roughshod over claimants whose claims are appealed.

Mr. Cooke: What difference does it make if they do prove it? It is irrelevant.

Mr. Bell: That's right. What difference does it make?

Mr. Goodman: I suggest that is one item that--

Mr. Cooke: Fairness is the bottom line.

Mr. Goodman: Fairness is the bottom line.

Mr. Chairman: One at a time please. Let us not get carried away.

11 a.m.

Mr. Bell: Dr. Murray, will you confirm for the committee that the decision whether or not an operative procedure or medical procedure is available in Ontario is the general manager's decision?

Dr. Murray: Not necessarily.

Mr. Bell: It is not.

Dr. Murray: No, it may go to the medical eligibility committee before that decision is reached.

Mr. Bell: But is it--

Dr. Murray: I say it may go; a lot of times it does not.

Mr. Bell: In most cases, is it the general manager's decision?

Dr. Murray: Yes.

Mr. Bell: In any event, regardless of whether it goes to the medical eligibility committee, the general manager has made a decision in each case at some level of the process. Is that right?

Dr. Murray: Yes.

Mr. Bell: Do you have Mr. Gibson's letter to me of September 1 before you?

Dr. Murray: Probably.

Mr. Bell: Would you turn to page two of that letter and in particular the second paragraph? I should say that your memorandum reflects also the substance of this paragraph.



He says, "The ministry's position which reflects the recommendation of the select committee is that a lenient and flexible approach should be taken in such cases."

Just stopping there, what he means by that, and it is almost word for word in your memorandum, is that claims for payment under R991, a lenient and flexible approach will be taken as to both the eligibility for such a payment and the amount. Is that correct?

Dr. Murray: Right.

Mr. Bell: Does that also include leniency and flexibility on the question of whether that service was available in Ontario, the classic Hawkesbury, Kenora, Windsor situation?

Dr. Murray: I would say, yes, it is looked upon that way. But if we find that we are bound by statute to pay it the way it dictates in the book, that is the way we pay it with an explanation to the patient as to why.

Mr. Bell: So that under the present system, notwithstanding the statement about the leniency and flexibility, the general manager does not have the discretion to allow an application for payment of a procedure in Detroit for Windsor or Montreal for Hawkesbury or Winnipeg for Kenora, where that procedure is somewhere available in Ontario?

Dr. Murray: No.

Mr. Bell: All right. We understand that now. This paragraph goes on to say that, "All decisions of the general manager, in such cases, should be appealable and that the claimant should be notified of the fact and of the procedure to be followed in all cases where the claim is refused or is reduced."

That says to me that all decisions of the general manager, in such cases, will be appealable. One of those decisions in such cases may be that such a procedure is available in Ontario and therefore we deny the claim. Do you care to respond to that?

Dr. Murray: As I say, if a procedure is available in Ontario and our information is such that it is, it therefore does not fall under R991 and therefore the general manager is not given leave to make any decision. The decision is made for him by statute.

Mr. Bell: But he has to exercise some degree of judgement to decide whether the procedure, which is the subject matter of the claim, is within the code. Is that not correct? It is not an automatic thing.

Dr. Murray: If the procedure is in the schedule of benefits then it is automatic.

Mr. Bell: The general manager has to make the judgement the procedure is within the schedule, does he not?

Dr. Murray: Yes.

Mr. Bell: Is that not a decision of the general manager in respect of a claim submitted under R991?

Dr. Murray: It is not submitted under R991. It is submitted under R123 or 567. It is not an R991 if the procedure is available in Ontario. There is already a pre-scheduled code assigned to it and by statute he is required to pay that amount opposite the amounts shown in what we refer to as schedule 15 which is our schedule of benefit.

Mr. Bell: I am misunderstanding. I was under the impression that this problem arose because people were submitting claims for payment under R991.

Dr. Murray: No. They are submitting claims for payment alleging that the procedure is not available in Ontario.

Mr. Bell: Under R991.

Dr. Murray: Alleging that they are not available. We are the ones who assigned the code to it. If there is no other code in the schedule of benefits by which we can pay that claim, it then becomes an R990 or an R991.

Mr. Bell: I should say that you have some colleagues behind you and, if you feel you would like, or if any of them feel they can contribute or assist the committee or anybody here in this exercise, they are more than welcome to come forward. I know they are on this other matter.

Is there any other reason why the general manager or the ministry is reluctant to make the issue of whether or not the procedure is available in Ontario the subject of appeal than just the perceived increase in the number of appeals that would follow?

Dr. Murray: I think the number of appeals could escalate to the point of not being able to handle them under the present circumstances.

Mr. Bell: But is there any other reason?

Dr. Murray: As I say, the other items we are speaking of, when they appear in the schedule of benefits and confirm that they are still available in the province, then are paid by statute at the amount shown in the schedule of benefits. The general manager does not have discretion to change that amount. If he reduces the amount as shown in the schedule of benefits, then there is an automatic appeal, yes.

Mr. Shymko: I am just trying to think of a fictitious case in an area that is obviously of great concern to everyone, and that is the cancer patient who goes to Mexico for the type of treatment that may not be recognized in Ontario and may not be in the code; in other words, a question of the type of treatment offered by a medical institution of doctors and recognized doctors in that particular country. If the patient, after being subjected to the treatment, is cured, would there be any way he would try to recover the expenses incurred?



Dr. Murray: There is a possibility.

Mr. Shymko: In other words, if you recognize it, if you believe a certain treatment which is not available here because the medical profession does not recognize it as being successful in treating your particular problem, and I know that many have been trapped or are victims because of either rumours or various aspects of publicizing a certain treatment, you are admitting that you would cover that expense?

Dr. Murray: No, we would not cover that expense.

Mr. Shymko: You have said in the case of that--

Dr. Murray: We may receive the accounts from the subscriber to be paid. I thought that was what you asked.

Mr. Shymko: Have there been cases, such as the case of the clinic in Mexico which is apparently enjoying some reputation internationally, either because of doubt in the profession or faith of many patients is providing a cure for cancer?

Dr. Murray: We have never received any bills from any Ontario subscribers who have been there in that particular case.

Mr. Goodman: Mr. Chairman, perhaps I should make it clear, although we concentrated on the availability/nonavailability issue, there are certainly other broader issues where the general manager exercises some judgement that ought to be appealable and, as I understand with its present position, are not.

I can give you a further example. If a patient has a staph infection and enlarged glands in a hospital in Ontario and the doctor feels it may be dentally related and suggests that X-rays be done by the hospital's dental department, those X-rays may not be paid for on the basis that they are dental and not medical. So they would not fall within the schedule.

Likewise, that decision should be appealable because obviously if the doctor ordered it and it is related to the medical condition--notwithstanding that the doctor in the hospital felt the X-rays ought to be taken by the dental department--clearly that patient should have the right of review. For the general manager simply to say that is a dental procedure, again as your counsel has pointed out, he is exercising a degree of judgement in making that and the patient should have the right on appeal to dispute that judgement on the facts of the case.

I don't want us to be in the position of being here again next year on the basis that the committee thinks we are confining the problem to availability/nonavailability. It goes much further than that. It goes to all sorts of discretionary judgements made by the general manager where he says it is not covered and the patient says it is.

11:10 a.m.

Mr. Eves: Personally, Mr. Chairman, I think there should be an appeal and notification of the extenuating circumstances suggested by Mr. Cooke a few minutes ago. While I appreciate Dr. Murray's position that OHIP makes every effort to notify patients of amounts that will be paid by OHIP, and I realize the administrative problems this may cause for OHIP, I still think there are some extenuating circumstances that have to be taken into account.

With respect to fairness, which I would agree is the underlying issue here, I think the availability of services under R991, or if you prefer under administration decision by the general manager, should be appealable. I think the majority of committee members here today are of the same opinion. I would suggest that the committee make that recommendation.

Mr. Chairman: I don't think there is any point in carrying on. I think we fully appreciate the position taken by the Ombudsman's office and the ministry's representative. Are there any further questions from the committee?

Thank you very much, doctor, for appearing here on such short notice. We appreciate it.

Could you gentlemen come forward, please? Are you prepared to carry on without your colleagues?

Interjection: I think in a moment or so. One went out to call and one went out to get the gentleman he's calling.

Mr. Bell: For the benefit of members of the committee I think I had better give you some more background than we started with yesterday.

Mr. Chairman: Could you indicate where we are in the book?

Mr. Bell: We are at C(g)(4)(iii). This is the matter of the fourth detailed summary in the Ombudsman's third report which was referred to by you at page 32 in your fifth report. I do not have the benefit of the Ombudsman's third report here today. I would appreciate if Mr. Goodman has it if he would let me have that because I think you need more detail.

Mr. Goodman: I am sorry, I don't have it. I did not anticipate we would need it. We are arranging to get one now.

Mr. Bell: The three recommendations made by the Ombudsman are clearly set out at page 94 of the appendix of his report that you have in this part of the brief.

The discussion yesterday centred around recommendations two and three; two being: Every unsuccessful candidate be provided with written reasons as to why his proposal was rejected based on these criteria; and three being the amendment to the Nursing Homes Act, in terms as set out on pages 94 and 95.

In your fifth report, on page 32, you say the following:



"The executive chairman of the area planning co-ordinator responded on behalf of the ministry as to the additional steps which have been taken subsequent to the letter from the minister to the Ombudsman dated May 4, 1977." That is attached as a schedule to this report, and I will refer to it in a minute.

You go on to say, "The committee is of the opinion that the ministry has and will continue to fully comply with the recommendations of the Ombudsman."

Schedule D starting at page 114 of the fifth report contains two letters actually. One is a letter from the then executive chairman of the area planning co-ordinators, David Corder. I think he has a different position now; it is irrelevant in any event.

He wrote to me on August 10, 1978 and he says the following: "Under recommendation of the Ombudsman that all applicants should be informed well in advance of the due date for applications of the criteria upon which the ministry intends to rely," et cetera. That is the first recommendation.

He says, "We have developed a procedure on evaluation criteria for assessing nursing home proposals." As I said, we are not concerning ourselves with that right now.

As to the second recommendation that every unsuccessful candidate should be provided with written reasons as to why his proposal was rejected based on these criteria, he comments as follows:

"You may be assured that we will provide a written explanation to unsuccessful candidates as to why their proposals were rejected. I am sure you can appreciate that subjective criteria such as the concern for human needs, originality and creativity, and the capacity to relate to the community might be fairly difficult, and indeed at times too provocative to communicate objectively. However, I am confident that ways can be found to touch on even these points in a way that will be perceived as being helpful to the applicant."

Then under the heading "Action Taken," he says: "Since the date of the minister's letter"--that would be the May 1978 letter--"there was only one proposal on which letters of rejection have gone out and the procedures outlined in the minister's comment was not followed. As you are aware, I have not been the director of the inspection branch since September 1977, and I cannot at this time, owing to the present director being on vacation, reconstruct what has occurred to give rise to this situation. However, I will discuss this situation with Mr. C. Brubacher on his return from vacation and be prepared to speak on the issue of the committee meetings."

Then under the heading of the amendment, he says, under minister's comments: "I agree with your recommendation that successful applicants have a right to an immediate conditional licence subject of course to compliance with the terms of the proposal under those provisions of the legislation which relate generally to licences."

He is prepared to propose a provision to this effect to amendment, but under "Action Taken" really nothing has happened because he refers to a substantial review of existing nursing home legislation, and to the review at this time, 1978, still being in the early stages.

11:20 a.m.

Then, the next letter, September 26, 1978, in a followup under the recommendation by the Ombudsman that every unsuccessful candidate should be provided with written reasons why the proposal was rejected, he again says--he really repeats what he said before under the Minister of Health's confidence, assuring you that a written explanation will be given.

Then under action taken, he again refers to the only proposal in the interval where rejection was given and where the procedure was not followed. He says, "This situation arose due to the newly appointed director of the inspection branch being unfamiliar with the Minister of Health's correspondence with the Ombudsman."

He then says: "This situation has been discussed with the director involved, and please be assured that this issue will be addressed in any future awards of new nursing home beds. In addition, this letter will confirm my agreement on behalf of the Ministry of Health to share with your committee a copy of the final document arising out of this ministry's substantial review of existing nursing home legislation."

The next communication you have is the one we read from yesterday, the letter of September 16 from Graham Scott to me, where at page two he says, "We have in mind to introduce the specific changes with regard to the award of a conditional licence as recommended." That goes to the amendment provision.

"We are hopeful that amendments to the Nursing Homes Act may be introduced in the spring. I may add that over the last several years, the ministry has formalized the request for proposals process for new nursing home beds." That really goes to the first one. What this letter does not address is the response and implementation of the Ombudsman's second recommendation, being the procedure to notify unsuccessful applicants with reasons.

Mr. Goodman: Mr. Chairman, I think that chronology of events should be viewed in the light of the minister's response, Mr. Timbrell's response to the Ombudsman is found at page 177 of the Ombudsman's third report. That response was received some four and a third years ago on May 4, 1977. It is quoted. Because you do not have that report in front of you I would like to take the time to read the recommendation and the response.

Mr. Bell: I think I have already done that because the response is identical to that which is contained in Mr. Corder's letter to us. If you compare, it is almost word for word.

Mr. Goodman: Are you reading 177 under item two?



Mr. Bell: Under one and two.

Mr. Goodman: I do not believe it is the same, and I would like the opportunity to read it so that the members can hear it.

Mr. Bell: Okay, I am just trying to save time.

Mr. Goodman: This is Mr. Timbrell's letter, and I am quoting, "I have received your opinion and recommendations on the complaint made to your office by the complainant, and I would like to make the following comments with respect to your recommendations."

"Recommendation one: All applicants should be informed well in advance of the due date for applications of the criteria upon which the ministry intends to rely in making the award for a nursing home, including the weight to be attached to each factor."

"We have developed a procedure in the evaluation criteria for assessing nursing home proposals, and I will see that all applicants are informed well in advance of the due date for applications as well as the criteria and procedures used to assess the applications." That has not yet been done.

"Recommendation two: Every unsuccessful candidate should be provided with written reasons as to why his proposal was rejected based on these criteria. You may be assured that we will provide a written explanation to unsuccessful candidates as to why their proposals were rejected."

Mr. Bell: I am sorry, Mr. Goodman; it is identical; it is word for word. I have compared it. I know what you are doing; It is not lost on the members of the committee or myself. But I do not think we should take any more time reading exactly what has been said into the record about five minutes ago. Mr. Corder just transposed the minister's letter into his letter to us.

Mr. Goodman: I was not aware of the fact that the committee members knew what undertaking was given by the minister.

Mr. Bell: I read that letter word for word on purpose because I wanted to make sure that both the Minister of Health's assurances given to the Ombudsman and the committee and Mr. Corder's assurances subsequently were known. The bottom line of it is that the assurances have been given that the procedure would be implemented, and up to and including Mr. Scott's letter, through you to us, yesterday, it seems that it has not been implemented.

I should further assist members of the committee, but first, would you gentlemen introduce yourselves with your positions?

Mr. Campbell: My name is Martin Campbell, I am with the legal branch of the Ministry of Health. These are Mr. William Bain and Mr. Boehm, also with the Ministry of Health.

Mr. Bell: These gentlemen, I think, with the exception of you, Mr. Campbell, or maybe even including you, have all

appeared before the committee. Mr. Campbell and I had a conversation maybe three weeks ago where he called me and advised that he had been asked to assist in the preparation of the response letter. He alerted me to some concerns that the ministry had as to compliance with item two.

Specifically, the concerns were as referred to by Dave Corder; that some of these judgements are subjective and the reasons may be provocative. Nevertheless, as far as Corder was concerned, he was confident he could work something out to prepare an appropriate response.

I told Mr. Campbell, "Whatever your concerns are, reduce them to writing and we will talk about them." I guess, Mr. Campbell, we are talking about more than the concerns; we are talking about the absence of any indication as to where this recommendation is with the ministry.

Mr. Goodman: Aside from Mr. Corder's response, I only had one further line to read in the minister's letter. I think that you should know that the minister's response was this:

"I am sure you can appreciate the subjective criteria such as the concern for human needs, originality and creativity, and the capacity to relate to the community, might be fairly difficult, and indeed at times perhaps too provocative, to communicate objectively. However, I am confident that ways can be found to touch on even these points in a way that will be perceived as being helpful to the applicant."

Again, this is as of May 4, 1977.

Mr. Bell: The words sound familiar now that we have heard them twice.

Mr. Campbell: I do not think there is any change from the basic ministry position that it is desirable to provide applicants with reasons for rejection of their applications. The problem has arisen in the implementation of the second recommendation.

The problem arises in that, having established criteria, which in many cases are based on financial or other considerations, the detailed response to unsuccessful applicants would inevitably consist of comparative financial and other confidential data. Therefore the ministry is in the position of either submitting a very brief and perhaps somewhat vague, "Thank you for applying but, sorry, you are not quite as good as nursing home A," which is not exactly satisfactory to the unsuccessful applicant; or setting out in great detail why nursing home A is not quite as good as nursing home B, which detail would include such things as financial records, staffing pattern, quality of care and so on.

Faced with the twin problems of disclosure of reasons and disclosure of confidential information, or information submitted to the ministry largely in confidence, the ministry is aware of the fact that we could fall very badly between these two dangers.



In effect what we are trying to do today is perhaps receive clarification of the types of reasons which this committee would like to see us producing.

Just for the record, since we are on it now, I understand from the nursing home people that in fact, in answer to Mr. Goodman's reading of the first recommendation, the criteria procedures used to assess various applications have been circulated and I believe are in the hands of the Ontario Nursing Home Association and indeed in the hands of anyone who chooses to apply.

Mr. Goodman: And the weight to be attached to each factor, Mr. Campbell?

Mr. Campbell: I would rather hear Mr. Boehm's knowledge on that.

Mr. Bain: I will deal with that. I am not certain, Mr. Goodman, that the weights are published, but I would mention that there is a public meeting for all applicants at which all questions are discussed and answered. Everyone is privy to the premise of information, and recently we have been making it very clear the basic criteria upon which we are assessing applicants.

For example, in Toronto, in a 300-bed nursing home proposal this year we did mention that the highest priority will be given to early availability and the safety to handicapped patients to be admitted.

11:30 a.m.

Mr. Philip: Is that the Etobicoke General application?

Mr. Bain: The Etobicoke General and Northwestern General, and there were two others.

Mr. Philip: It would have been nice if you had told the board of governors instead of having the Conservative candidate announce it in their lobby without their being consulted. That seems to be the way in which you people operate.

Mr. Bain: I do not want to be drawn into that, sir, but the duty we have and which we observed--

Mr. Philip: I realize that is not for the Ombudsman's committee. I apologize.

Mr. Bain: The duty we have, and which we observed, is to respond to the applicant. In this case we responded to the applicant.

Mr. Bell: I know something about the nursing home industry in the last two or three years. I am not aware that the industry per se has any concerns as to the type of information or the weight to be given to the various criteria on an application. My firm represents a number of nursing homes.

Mr. Goodman: That was precisely the concern, Mr. Bell, that led to the Ombudsman's recommendation.

Mr. Bell: I am talking 1981 here. I am just saying, if it will assist anybody, I am not aware that there is any real concern that the changes that were implemented--not in any small way as the result of the Ombudsman's efforts--seem to afford relief of the concern that was originally expressed.

Mr. Goodman: I am the last person to suggest that the ministry has not made improvements since the recommendation of both the Ombudsman and the committee was made. They certainly have, and they are good improvements, but they still fall short of the very recommendation that this committee supported and made to the Legislature.

Mr. Bell: Are we talking about number one now, or two and three?

Mr. Goodman: No, we are talking about one and two.

Mr. Bell: I would like to get on to number two and that is the unsuccessful applicant.

Mr. Campbell: Are we to take it that the committee is satisfied with whatever the ministry does now with respect to recommendation number one, or is it just for further clarification?

Mr. Bell: I am not sure that the committee has ever seen what the ministry does with recommendation number one. Prior to today I am not sure the committee had ever been told by the Ombudsman's office, except that they were dissatisfied with what was happening to number one. And I am not sure the ministry has ever been told that they were dissatisfied with what is happening to number one.

If there is dissatisfaction, we will certainly hear it from the Ombudsman's office at some appropriate time and I think, in fairness, give you gentlemen an opportunity of responding to that. I thought we were doing two and three today.

Mr. Campbell: I was under that impression as well.

Mr. Bell: Can we get on to two and three, and if we have to go back to one, we will.

Mr. Goodman: I would suggest that you do not lose sight of number one. The committee brought in an appropriate recommendation and it has not been implemented to date to our knowledge.

Mr. Bell: Mr. Goodman, if you are not satisfied with the way a recommendation has been implemented, then would you take it under advisement and ask the Ombudsman to do so, to say so in the present status in this appendix. Because the way I read that appendix, you are satisfied with number one.

Mr. Goodman: That is not so. Number one would not have



been included in the appendix if the Ombudsman was satisfied. The Ombudsman, at the suggestion of this committee, has only included outstanding matters. Number one would not have found its way into the appendix if the Ombudsman was satisfied.

Mr. Bell: Would you take under advisement then, making comment about the manner in which the recommendation has been implemented to date?

Mr. Goodman: My understanding, Mr. Bell, is it was at the suggestion of this committee that the Ombudsman included the columns, "considered in select committee," "recommendation of the committee," and "present status." The present status makes it clear that recommendation one has not been implemented. That is why, again, we included it in the appendix.

Mr. Bell: Some time you can explain to me, then, how that present status column indicates that number one has not been implemented. The way I read it it has been implemented and there is no concern by the Ombudsman's office as to the extent of implementation.

Mr. Goodman: I would suggest if you review the correspondence with reference to the present status, you will note that it is absolutely clear that recommendation one has not been implemented to date. There are steps that the ministry says it has taken, and they are all noted in the present status. There is no indication in the present status column that recommendation one has been implemented.

To be fair to the ministry, the Ombudsman felt it appropriate to include in the present status the steps that the ministry has taken.

Mr. Boudria: So, in other words, can we conclude that our legal counsel is suggesting that the words should have been much stronger under "present status" to illustrate our dissatisfaction, rather than just leaving them the way they are now?

Mr. Bell: I guess just from a selfish point of view I zeroed in on two and three. I guess it requires more preparation by your counsel. When I get the appendix, I had better go back and review the chronology to date so that I can make an assessment whether or not there has been any degree of implementation. Perhaps it rests on the shoulders of your counsel, unless it rests on the shoulders of others; I do not know.

I would like to get on to dealing with the matters about which those gentlemen have come today. I think you had better take under strong advisement-- Bear in mind, members of the committee, we are not talking about your recommendation here. We are talking about a recommendation of the Ombudsman which was accepted by the minister before it came to you. The committee, as it should do, has reviewed this matter every time it has arisen, to ensure that the Ombudsman does get compliance.

Mr. Campbell: I think in fairness to the ministry we

should put our position forward. That is, administratively the substance of recommendation number one has been brought in. However, as I read the present status, it is quite correct to say that necessary amendments have yet to be enacted. No amendments to the Nursing Homes Act have been enacted.

Mr. Bell: That is number three.

Mr. Campbell: I presume, in looking at number one, the point was, you have not yet enacted the law setting up the criteria.

Mr. Bell: Is that right?

Mr. Goodman: No. Recommendation three was directed solely to conditional licences. For recommendations one and two, neither the Ombudsman nor the Ministry of Health felt that amendments were necessary; that they would merely improve the administrative procedures.

Mr. Bell: What do you say has not yet been done in respect to recommendation one?

Mr. Goodman: It is my understanding from the correspondence that, although the ministry gives applicants a questionnaire which indicates the information that the ministry requires from applicants, the questionnaire is a general questionnaire and does not indicate the criteria that the ministry is going to take into account in respect to the construction to be given. That is the first problem.

The second problem is there is no indication, on the questionnaire or anywhere else, of the weight to be attached to those factors. If that is not the case, I would certainly like to hear it from you and would be pleased to delete it from the next status report.

Mr. Bell: Is there anything else about recommendation number one that the Ombudsman believes requires further implementation?

Mr. Goodman: It is my understanding that neither the criteria nor the weight have still been made available to applicants.

Mr. Bell: There are two remaining items that are of concern to the Ombudsman, weight and criteria.

Mr. Campbell: And the publication of criteria.

Mr. Philip: Would the weight not change from time to time depending on the priorities of the ministry and the existing conditions at the time?

Mr. Bain: Yes. Perhaps I could spend just a few minutes explaining the process. When we do have any traditional nursing home beds and funds are available, we consult with local people through the district health council organization to get their



input as to the proper criteria. The district health council, who represent the local community, are fully involved in the process.

We then advertise, request their proposals and we make very clear what we are looking for. I have mentioned to you about Toronto in terms of bed availability, heavy care being given priority. We have a full meeting with all bidders and explain the process to them. We interview those who seem capable on the basis of their written submissions of coming closest to meeting the requirements. We have discussions with them, if they require it after the event, to explain what transpired.

I may say that, generally, as far as I am aware within the industry, there is full satisfaction with the process. It has been discussed many times with the Ontario Nursing Home Association and I am not aware of any dissatisfaction with it.

11:40 a.m.

Mr. Bell: Mr. Bain, Mr. Boehm or Mr. Campbell, would you make some specific response though to Mr. Goodman's two points that in the terms of the written material that is distributed to applicants for a licence the criteria are not specified nor is there any indication as to the weight that is to be given to any of the criteria on the face of the application or any other documentation accompanying it?

Mr. Campbell: May I just ask Mr. Boehm a question?

Mr. Bell: Feel free to confer.

Mr. Campbell: Perhaps what we might do to more fully inform Mr. Goodman is to prepare a sample letter of the sort that normally goes out on proposals and have him review it and if he has further comments we would be pleased to consider them with him. I think that might be the safest and fastest way around this.

Mr. Bell: Okay. Just put the committee on your mailing list back and forth so I can keep abreast of what has been done and Mr. Goodman will then advise us whether number one should be hereafter taken off the list.

Is that agreeable to you, Mr. Goodman, to do it that way? Okay.

Can we get to number two, because I think everybody is ad idem that there has not been a procedure implemented to date, as Mr. Campbell has indicated, for the reasons he has given.

Mr. Campbell, yesterday when I tried to paraphrase our discussions and express the reasons for your concern, Mr. Goodman said he had an easy answer to your problem. I did not let him answer it. I was saving it for today. Mr. Goodman, would you share the easy answer with us?

Mr. Goodman: Certainly, we will be whatever assistance we can to the ministry. We are daily faced with the same problems faced by the ministry in the Ombudsman writing reports to

complainants, finding their complaints either to be supportive or not supportive, where certain information has been imparted to us during the course of the investigation which the Ombudsman feels might be harmful to the complainant if disclosed to him in a report or harmful to a third person. The Ombudsman exercises a discretion, as the act permits him to do, to impart only the information he feels is necessary for the complainant to understand why he reached the conclusion he did.

Certainly the minister felt, and Mr. Corder felt, way back in 1977, that although there were problems the ministry was confident it could resolve the problems and advise unsuccessful applicants in a manner that both the ministry and the unsuccessful applicants would find acceptable.

You will recall that this case began because an unsuccessful applicant came to the Ombudsman on the basis that he did not know why his application was rejected.

Mr. Campbell: I think the position now is that any applicant whose application has been rejected is notified formally, but the reasons given are not very detailed.

I think we would accept very readily Mr. Goodman's suggestion that a meeting between ministry officials and the Ombudsman to work on appropriate wording or appropriate content would be certainly acceptable.

Mr. Bell: You see, Dave Corder has already written the script for it when he said, "Look, we realize it is a problem but we are pretty sure we can work it out." That is a good suggestion because initially you are going to have to obtain the satisfaction of the Ombudsman in respect to the response to the recommendation. If the Ombudsman says to the committee, "I am satisfied," I am surprised the committee went beyond that.

Mr. Goodman made a point yesterday that the time factor here is inordinate. Speaking for myself, I share that concern and I am sure you gentlemen do as well. Can we be assured that you will get on with it as quickly as possible. I don't imagine you have had too many applications in the last two or three years though.

Mr. Campbell: A number, but not a great number. Part of the problem is we do not have quite the same statutory set up the Ombudsman has. Second, the aim of the interview process is to have reasonably full and frank discussions with operators. If it is generally known that a lot of the information given out in private meetings essentially is likely to be spread around the industry or among other applicants there may well be problems, but I am confident we can probably work out appropriate formulas.

Mr. Bell: I cannot imagine the Ombudsman would ever want you to participate in an exercise which offended the duty of confidentiality or became potentially defamatory or things like that.

Mr. Goodman: I can state for the record that the Ombudsman never intended making the recommendation that we did



that every unsuccessful applicant be shown the applications, for instance, of every other applicant including the successful applicant and be informed of the reasons as to why theirs were rejected or accepted, as the case might be, and his was rejected.

Mr. Bell: I can think of some owners in the industry that might be interested in that process.

Mr. Goodman: That's right. That is exactly the point. The Ombudsman is aware of commercial considerations and the care that has to be taken in responding to unsuccessful applicants.

Mr. Cooke: Is there any explanation why it has taken such a long time after a letter from the minister four years ago when there were still noncompliance?

Mr. Campbell: I think the initial recommendation number one was implemented reasonably speedily after the minister's letter. The problems have arisen--

Mr. Cooke: There is disagreement that it has been implemented.

Mr. Campbell: In the ministry's view, with respect to the letter notifying persons that the application was rejected, I think the problem only arose as we looked at the substance of what in fact was going out. Initially it was a form of letter which did not go into great detail as to why a given application was rejected. Initially it was thought the letter alone was sufficient. But in review it appears that if substance is to be given to the Ombudsman's recommendation, then more detail is necessary.

Mr. Cooke: It would seem though from the minister's letter four years ago that he understood what the recommendation meant, where he understands very clearly the problems that you are still talking about four years later.

Mr. Bain: I guess, Mr. Chairman, my understanding is if someone is dissatisfied and writes to us, we do give a fairly detailed explanation within our power to do so. For example, if it is fairly evident and there is no commercial consideration--

Mr. Cooke: That is giving me an explanation of what is done. I wanted to know why there hadn't been compliance in the four years?

Mr. Bain: I believe we have complied with this. I guess it is a question of judgement as to how much goes into the explanation which goes to unsuccessful bidders. If someone is sufficiently exercised to write to us and say, "I would like to know more about what transpired," then we will either write to them or meet with the individual and try and satisfy him.

Mr. Cooke: But the recommendation was clear. Every unsuccessful candidate, not just the ones that want explanations.

Mr. Bain: No, I think the answer I have, sir, is we will provide a written explanation to unsuccessful candidates and we do do that.

Mr. Philip: Who makes the decision? What level of the ministry makes the decision as to whether a candidate is successful or not? Does the minister review those decisions or does he review the rejections? What level makes these decisions?

Mr. Bain: It is the minister's decision in the final analysis.

Mr. Philip: What is the process? The minister will sometimes tell you, "No, I don't like a decision, review it again"?

Mr. Bain: The process is Mr. Boehm's staff in the institution operations branch, with a lot of staff in other parts of the ministry--district health council may be represented if they wish--review all the applications. There is a standard marking scale laid down for staff. They mark, they assess the applicants. They interview the top three, four, five, whatever seems to be appropriate.

There is a standard questionnaire (inaudible) everyone has not chosen to respond. There is a marking scale for the interview. Based on the analysis of all the marks, recommendations go forward through the line organization in the ministry to the minister.

Mr. Philip: Then the minister will either accept those recommendations or reject them?

Mr. Bain: As a minister may do with any staff recommendation.

Mr. Philip: Yes, but I think that there is a difference depending on the ministry. For example, the Minister of Transportation and Communications may well have to sign an application for a licence for a carrier and that may mean millions of dollars, but I have yet to know of an instance where the minister would question the decision by the board.

What I am asking you is, are there instances where the minister becomes directly involved in that decision making or indeed where he sends it back for re-evaluation of a decision made at a lower level by public servants?

Mr. Bain: To the best of my knowledge, the recommendations which have gone forward have been accepted by the minister.

11:50 a.m.

Mr. Bell: My two cents, for what it is worth: It seems to me that the criteria that is required on an application for an nursing home licence, in terms of detail and items, it is probably more extensive than even a public hospital because of the extensiveness of the regulations under the Nursing Homes Act and it is one of the few occasions where private industry is regulated



almost exclusively or totally by statute and regulation. It seems to me that a minister who questioned a decision or a recommendation for an application had better do so on pretty solid grounds.

Is there anything else about recommendation two? Mr. Campbell, Mr. Bain, Mr. Boehm? Mr. Boehm, you have to say something. You have to share your wit with this room today. I don't want anybody to get the impression that Mr. Boehm is a quiet unassuming man. He has a very enjoyable wit.

In any event, number three, the amendments. Where are we with those? Is there a draft of the sections referred to in this recommendation presently in existence?

Mr. Campbell: Notes, but not formal wording or draft wording at this stage.

Mr. Bell: You have not drafted the--

Mr. Campbell: Magic words, no.

Mr. Bell: Is there any problem when that drafting is done in sharing it with the committee?

Mr. Campbell: None whatsoever.

Mr. Bell: Would you put a note on your files that when that section has been drafted you will provide it to the committee and also to the Ombudsman's office indicating this will probably be what is tabled in the Legislature. The spring of 1982 is your goal?

Mr. Bain: Hopefully, yes.

Mr. Bell: Is that with the general house-cleaning bill?

Mr. Bain: Yes.

Mr. Bell: Under the Nursing Homes Act?

Mr. Campbell: Yes. Part of the problem is the regulations were reviewed only a year or so ago and we have to see how that works in practice.

Mr. Bell: Are you going to be doing anything respecting the level of resident care in and around the 1.5 hours a day?

Mr. Campbell: In view of your acting for the nursing homes, perhaps we might not say right now.

Mr. Bell: Sorry, I was just trying to get some free information.

I have no further questions.

Mr. Chairman: Mr. Goodman, do you have any questions?

Mr. Bell: I do have further questions. I think it is

reasonable to expect a deadline for this. Would you agree?

Mr. Campbell: It is not totally in our hands, of course.

Mr. Bell: I am not talking about the amendment. I am talking about recommendation two.

Mr. Campbell: Oh, certainly.

Mr. Goodman: Let's not lose sight of one.

Mr. Bell: With the exception of number three, which we all recognize is out of your hands to a great degree, but one and two, can we put a deadline on everybody, perhaps reasonable in the circumstances?

Mr. Campbell: I will undertake to deliver to Mr. Goodman within perhaps two or three weeks, sample letters which have gone out in the past to applicants. He can review them at his leisure.

Mr. Bell: Is it reasonable to ask that this process be completed by October 13, or at least by the end of that week? That is the week the House returns.

Mr. Goodman: I have a problem with that, Mr. Chairman, because we have the Pickering report, Mr. Hoilett's report, to consider as soon as possible. I will do my best to get together with Mr. Campbell and those officials of the ministry he feels are appropriate as soon as I receive the communications.

Mr. Bell: You are going to run the risk the committee is going to finish its report and table it in the Legislature before this is done. I don't think you should incur that risk.

Mr. Goodman: We will do our best. Ms. Bohnen is involved in considering the Pickering report as well with the Ombudsman. That is in fact--

Mr. Bell: You can do this between 1 a.m. and 2 a.m.

Mr. Goodman: We will do our very best to get back to the committee by then.

Mr. Bell: Thank you.

I have nothing further, Mr. Chairman.

Mr. Chairman: Anything from the committee? Thank you very much for coming here today.

This really concludes the necessity for the Ombudsman's staff in hearing anything further. Is there anything else?

Mr. Goodman: There is one further item, and that is, as if by magic--

Mr. Bell: There is that file that was coming down from--



Mr. Goodman: That is right. As if by magic we have now received from archives this morning the file referenced in the latest communication received by the committee from a member of the public, the one in which he alleges that the Ombudsman suggested, before he determined jurisdiction, that the complainant obtain a survey or a report at a cost to the complainant of \$5,000.

I believe I can, in about two minutes, lay that matter to rest, I hope to the satisfaction of the committee.

Mr. Chairman: Is everyone aware of what we are dealing with now?

Interjection: Yes.

Mr. Goodman: Mr. Chairman, with your permission, I would like to read into the record a letter to the complainant from the Ombudsman, dated October 13, 1977, which was the date that this matter was closed in the Ombudsman's office. I think that will respond to the complainant's concern and the select committee will understand the history of this matter. This is a letter from Mr. Maloney, the former Ombudsman, to the complainant.

"Further to your meeting with members of my staff on September 29, 1977, I would like to make the following comments.

"You will recall that you wrote to us on August 12, 1977, requesting a meeting and on September 26 you telephoned our office in this regard. During a conversation with a member of my office, you were advised that a letter was being sent to you which set out our lack of jurisdiction. It was suggested that you should await receipt of this letter and then contact my office to arrange an appointment. However, you stated that you wished to meet with us on September 29 and, accordingly, a meeting was arranged for that date with Mr. Michael Zacks and Miss Ruth Hartman of my office.

"During this interview, your complaint was discussed further and you set out the reasons why you felt the Ombudsman should investigate your complaint against the conservation authority and the Supreme Court's review of the decision of the Ontario Land Compensation Board.

"Although I can well understand your concern, I must point out the limitations on the jurisdiction of the Ombudsman."

Then the Ombudsman goes on to detail the definition of governmental organization as set forth in the act.

"Briefly stated, my position is that I do not have jurisdiction over the decision of the conservation authority as it is not a governmental organization. Further, under section 14(a) of the Ombudsman Act, 1975, decisions of the Ontario courts, in reviewing decisions of the land compensation board, are expressly excluded from my jurisdiction. However, since your complaint involves a number of bodies, I think that the best way to set out my position is to recount your complaint chronologically.

"You will recall that in a letter from my office dated May 26, 1976, you advised that since your complaint appeared to be directed against the court's treatment of landowners and expropriation matters, the Ombudsman did not have jurisdiction. On June 7 you replied, stating that your complaint was against the conservation authority and the Ontario Land Compensation Board. Consequently, your file was reopened and after an exchange of correspondence, my office suggested that an interview was the best way to obtain the details required to determine jurisdiction.

"You responded with the suggestion that we contact your lawyer in Toronto in order that he may answer our questions on your behalf. We did so and in a letter dated September 27, 1976, your lawyer"--and he is named--"set out the following matters as those you wished the Ombudsman to investigate.

"1. Did the conservation authority expropriate more land than was necessary for its use when it took X amount of acres of land, whereas apparently X minus Y acres was sufficient for its purpose?

12 noon

"2. Were the complainants denied effectively the right of appeal conferred by the Expropriation Act by the several decisions of the several courts before which the matter came, and should the matter be referred back to the land compensation board for rehearing, or alternatively, should the compensation be increased?

"3. Should it be suggested to the Attorney General that he not press the claimants for costs awarded to him by the divisional court?

"4. Should it be suggested to the conservation authority that it not press the complainants for costs awarded by the various courts before which the matter came?

"On November 10, 1976"--and this is crucial--"Brian Goodman of my office wrote to you indicating that we did not have jurisdiction to investigate the above matters. It was noted, however, that I would see what could be done on an informal basis regarding the issue of costs, as outlined in your lawyer's third point. Accordingly, I wrote to the Deputy Attorney General--"

Mr. Bell: What did Frank do?

Mr. Goodman: "--and relayed your request that the Attorney General not press its claim for costs against you. I enclosed the letter from your solicitor in which he set out the background facts of your case.

"The Attorney General's response was that the order for costs given by the court should be respected, and accordingly my office wrote to your lawyer on February 18, 1977, informing him of this and advising him that we could be of no further assistance in this regard. I understand that he has relayed this information to you."



So, notwithstanding the fact that it was nonjurisdictional, the Ombudsman, nevertheless, informally approached the deputy.

Mr. Bell: Mr. Goodman, if the rest of the letter continues to deal with the issue of the Ombudsman's judgement that he lacked jurisdiction, I do not think you have to read any more.

Mr. Goodman: No. But the concern is expressed, and this is the next paragraph.

Mr. Bell: My timing is--

Mr. Goodman: You are always anticipating, just as I do.

His concern was expressed that we asked him to get two reports or a report before we told him that we lacked jurisdiction.

Mr. Bell: That is what we are interested in.

Mr. Goodman: "You have enclosed, in your most recent letter, two copies of an engineering report. We have carefully reviewed these and conclude that they do not affect our earlier view, namely, that we lack jurisdiction in this matter. The decision to take X acres of land instead of X minus Y acres of land is not one which my office has power to investigate, because it was made by a conservation authority over which the Ombudsman has no jurisdiction, as it is not a governmental organization.

"As you know, although your complaint is not within our jurisdiction, I, at one point, did attempt to assist you informally with regard to costs, but without success. Accordingly, it is my feeling that we have done all we can in this matter.

"Apparently you are of the opinion that my conclusion that the Ombudsman lacks jurisdiction is 'a very narrow view of the Ombudsman's authority.' I very much regret that you feel this way. I understand that you intend to discuss the matter of the Ombudsman's jurisdiction further with Mr. James Renwick, MPP, a member of the select committee. In the event that Mr. Renwick has a different view as to the Ombudsman's jurisdiction over your complaint, I will be happy to arrange a meeting with Mr. Renwick and yourself to discuss this matter further."

The complainant then--

Mr. Chairman: Mr. Goodman, I wonder if I could interject. I know you said you would handle this in two minutes. I think the meat of this thing was his contention that the Ombudsman had requested topographical mapping which cost him something like \$5,000. That was my understanding of it. There is no reference in any of the correspondence to a request for engineering studies or a topographical map. Is that not what we are dealing with now?

Mr. Goodman: My understanding is that the complainant, on his own initiative, determined that he ought to obtain those reports and send them to the Ombudsman. But he had already been told that the Ombudsman lacked the authority to investigate his various complaints.

Mr. Philip: The essential questions are: what is the date on which he obtained those reports and what is the earliest date at which you informed him that you had no jurisdiction? If we can have those two dates, then we can set the matter to rest surely.

Mr. Goodman: That is precisely why I wanted to read the letter.

Interjection: Mr. Goodman, I am sorry--

Mr. Chairman: No. I would like to interject. Mr. Shymko had his hand up first.

Mr. Shymko: My question is did you give him the impression that such a report was necessary, or allude to the necessity of such a report, prior to finding out you had no jurisdiction?

Mr. Goodman: No. I cannot find any indication in the file that we did that, none whatsoever.

Mr. Shymko: In the normal procedure of review, when you were dealing with him, would it not have been sort of a matter reasonably entrenched in his mind that such a report was necessary?

Mr. Goodman: Again, we told him back in July 1976 that we did not have the authority to investigate his complaint. Notwithstanding our various letters he continued to write to us. The last letter which he sent was July 1980, notwithstanding the closure of his file in 1977. He continues to write and say: "You should have authority. I think you do have authority over conservation authorities." He then asked us to review our earlier decision as to jurisdiction in light of the Court of Appeal's decision in the health disciplines board matter.

Mr. Morand wrote to him on August 6, 1980, and advised that again we had thoroughly considered the question of jurisdiction in light of the court of appeal's decision, and that Mr. Morand was of the view that he lacks the jurisdiction and that, given his view, he did not believe it was appropriate for him to ask for a declaration from the Supreme Court.

Mr. Shymko: I am sure the complainant has accepted the fact that the Ombudsman's office lacks jurisdiction in this area. His basic complaint is claiming the expense of \$5,000 for that. So, I wanted to know what is the time factor when he first came to you and when you finally realized. How many months was it; when did you realize you had no jurisdiction?

Mr. Bell: That would be your first letter to him, or conversation with him, Mr. Goodman.

Mr. Shymko: Your first conversation with him.

Mr. Goodman: He first wrote the office on April 12, 1976; he wrote Mr. Maloney, but there were no details in his letter, whatsoever. That is why I wanted to read the letter. But



it was only when we received his lawyer's letter, wherein he detailed the various complaints on behalf of his client that the Ombudsman was in a position to determine whether or not he had authority over any of the matters complained of. It was subsequent to the Ombudsman's response as to lack of jurisdiction that it appears the complainant sent in any reports.

Mr. Shymko: But it would be normal, if I am preparing my case before the Ombudsman, that I would try to get as extensive information and evidence to support my case before you and go to the expense of having that report done.

Mr. Goodman: That may be so, but certainly we have no control over that. I cannot tell you, if I do not know before you come to the Ombudsman's office, that you ought not to go to the expense of obtaining a report.

Mr. Philip: That is not a report that he was talking about. It was a topographical survey.

Mr. Goodman: All I can see is reference to engineering reports and reference to the reports that were filed before the land compensation board.

Mr. Barlow: What are those (inaudible) that \$5,000 item that we were discussing?

Mr. Chairman: The letter we circulated.

Mr. Barlow: Yes, I know. Oh, we do not have the letter now?

Mr. Chairman: Yes. You should have.

Mr. Barlow: Oh. What is it? What item?

Mr. Bell: It should be under A(c).

Mr. Barlow: Oh, it is that one. I could not remember what it was. Okay.

Mr. Goodman: I wish to assure the members of the committee that the Ombudsman does not make it a practice, in fact, I am not aware of any occasion where the Ombudsman, or any member of his staff, has encouraged a complainant to go to the expense of obtaining independent reports before the Ombudsman determines whether or not he has jurisdiction over it.

Mr. Bell: Mr. Goodman, would you turn to--is that file in chronological order?

Mr. Goodman: Yes. It is.

Mr. Bell: He complained in 1976; May 1976 was the initial receipt of the complaint?

Mr. Goodman: He complained in April 1976.

Mr. Bell: April. Did you have your procedure then in force that there was an opening memorandum on the file and/or a copy of the initial complaint?

Mr. Goodman: Yes.

Mr. Bell: Does the initial complaint refer to a survey at all?

Mr. Goodman: No.

Mr. Bell: Is there an opening memorandum?

Mr. Goodman: There is a letter from Mr. Maloney and a closing memorandum. Perhaps I could read his initial letter and you will see the difficulty that we were faced with.

Mr. Bell: No.

Mr. Goodman: He did not detail his complaint in the initial letter.

Mr. Bell: I do not think you have to be concerned on the issue of jurisdiction. The only issue is whether or not the gentleman formed the opinion that he should provide a survey to assist in the investigation.

Is there, either in that opening memorandum or in Mr. Maloney's letter, or in any other documentation from that point until he was first informed that you lacked jurisdiction, anything on file to indicate either a request for a survey to be provided, or an indication that a survey was, in fact, provided to your office?

12:10 p.m.

Mr. Goodman: No, there was none. But, again, bear in mind that we told him we lacked the authority a number of times. He kept coming forward with additional claims.

Mr. Bell: That's what I said: from the first time you notified him.

Mr. Goodman: We first notified him--

Mr. Bell: In 1977 some time.

Mr. Goodman: No, in June 1976.

Mr. Shymko: Oh, in June 1976.

Mr. Goodman: But that is because there was absolutely no detail in his first letter of complaint to suggest that his complaint was against anything other than--

Mr. Bell: So the only documentation your office received from this gentleman other than his letters and letters from his



lawyer is the engineering report you referred to, which you received sometime in 1977?

Mr. Goodman: In his letter to Mr. Hoilett, now Judge Hoilett, dated June 1976, he does reference appraisal reports, but these are appraisal reports that were filed with the land compensation board.

Mr. Bell: That's not a topographical survey.

Mr. Goodman: There's no reference anywhere in the material that I can see to any topographical survey. There's reference to appraisal reports and engineering reports.

Mr. Barlow: We had never heard of the topographical survey until we got this letter dated September 9 yesterday. Did you ever get that \$5,000 figure?

Mr. Goodman: I can't find any reference to it whatsoever, nor is there any allegation in our file that we suggested that he go ahead and do this. He never wrote and complained about that. All he complained about was that he felt that we were taking a narrow view of our jurisdiction and that we should reconsider our position and investigate his complaint against the conservation authority.

There is certainly reference to reports, but these are reports that were filed with the board and later reports that were supplied to our office after we told him on a number of occasions that we lacked the authority to investigate.

Mr. Van Horne: In other words, the first sentence in paragraph four of his letter is not consistent with the facts or the truth as you see it.

Ms. Bohnen: Mr. Chairman, if I can be helpful, I must say that when I read the complainant's letter to the select committee I thought, and I still suspect, that he meant the reference to "topographical survey of my complaint" metaphorically, and what he was complaining about was that he felt he had spent a lot of time and energy in pressing his complaint to the office and that that time and energy, including what he probably had to pay his lawyer for writing to us at all, had cost him \$5,000, and that he doesn't mean a specific survey.

Mr. Bell: When you read those words in that paragraph there is no doubt that as far as this gentleman is concerned he was requested to provide a topographical survey, which was done at a cost of more than \$5,000.

Ms. Bohnen: But if you see the words he uses he says, "a topographical survey of my complaint," and that's not--

Mr. Bell: Oh, I see what you're saying.

Ms. Bohnen: And that's not how he would refer to a specific survey that would relate to the expropriation matter. Plus I don't think a topographical survey is exactly the kind of

thing that usually bears that directly on an expropriation; there are technical reports, but they are not usually topographical. So I think he means it metaphorically, and I suggest that if you check with him he will not say that we told him or even asked him to get a particular topographical survey that would bear on his complaint.

Mr. Goodman: There's one letter I think I should read, because this may be the survey he's referring to--if it's any one it's this one. It's a letter written to me in April of 1977:

"Referring to yours of the November 10 last: Since then there have been some conversations with my lawyer on my behalf, and it was suggested we secure engineering opinion with respect to the lands taken, having regard to section 20 of the Conservation Authorities Act, 'A program whereby the natural resources of the watershed may be conserved.'

"Our contention is that it was not necessary to take X acres when only a minimum parcel of the area was involved, and particularly having regard to the topography of the area is concerned. We have asked an engineering company"--and it's named--"to provide us with such a plan and will be submitted to you shortly. Tentatively we expect to be up there during the first week in May, and would like to have an appointment to present the matter."

Now, if that letter suggests that I asked his lawyer to obtain a copy of the report I wish to assure that I did no such thing.

Mr. Bell: No, but what it does is to shoot Ms. Bohnen's theory down. It also ties in "topographical" with the engineer's report that you received some time in 1977.

Mr. Goodman: That is why I thought it might be helpful to read the letter.

Mr. Bell: Very helpful.

Mr. Goodman: But again, he had been told that we lacked the authority before that time, long before that time.

Mr. Cooke: Does that letter not refer to the letter that the Ombudsman had written to him?

Mr. Goodman: Yes. That's the letter of November 10, 1976, wherein we told him we had no authority to investigate his complaint.

Mr. Cooke: There's nothing in that letter of November of 1976 suggesting that any kind of report should be obtained?

Mr. Bell: Or anything that says, "If I had more information I might--

Mr. Shymko: Is it in the letter of November 1976 that the Ombudsman not only stated that it was beyond his jurisdiction



but did insinuate that he would pursue this problem with the deputy minister? Is that in that letter?

Interjection: Informally.

Mr. Shymko: Informally or not informally? In other words, there is an insinuation that this will be pursued informally, but still pursued.

Mr. Philip: What difference does that make?

Mr. Shymko: Well, it may have given him the impression that there is still some chance for him to argue the case, and therefore he proceeded with this engineering report.

Mr. Philip: If he did that, though, on his own initiative on some faint hope that doesn't give him any claim to have the Ombudsman pay for it.

Mr. Shymko: But I feel that the Ombudsman should have terminated the letter by simply saying, "This is beyond our jurisdiction--period," and not by saying that he would pursue it. Maybe. I don't know. I just think it may have given him some false hope.

Mr. Philip: You can't fault the Ombudsman for doing a little bit more than he was required to do.

Mr. Bell: Have you found that letter, Mr. Goodman?

Mr. Goodman: Let me read a memorandum that Mr. O'Connor, the assistant director of legal services, wrote to me in October of 1976:

"The solicitor for the complainant is a personal friend of mine. A few months ago he invited me to lunch to discuss this matter. At the time I did not know we had a file and knew nothing of the past except what he told me at lunch. I advised him of our apparent lack of jurisdiction at the time and the obvious grounds of court decisions..."

He was advised long before this time that we lacked the authority to investigate. Now it appears that he, for reasons best known to himself or perhaps his lawyer, decided to obtain an engineering report and send it to us.

Mr. Cooke: What does the letter of November 1976 say?

Ms. Bohnen: We can't find one.

Mr. Goodman: There's no letter of November 1976 in the file. I don't know what he is referring to.

Mr. Chairman: Do you not feel, members of the committee, that we have sufficient information to deal with this? Really I think there is no concern in regard to the question of jurisdiction.

Mr. Cooke: The question of jurisdiction is one matter. But if the Ombudsman doesn't have jurisdiction and he is going to try to resolve some of these problems even though he doesn't have jurisdiction--and I am sure we would all encourage him to do so--that matter is not completely relevant. We have to see if there is a letter of November 1976, and if there isn't that letter there has got to be some letter he's referring to. If we can hear that it would clear up the whole matter.

Mr. Goodman: Well, there's no letter of November 1976 apart from his lawyer's letter to me, so perhaps it's a reference to that letter. I can't tell you what he's referred to. Only he can tell you that.

Mr. Chairman: What about the letter immediately prior to your receiving the letter from him where he makes reference to the topographical survey--your last letter?

Mr. Goodman: Before (inaudible).

Mr. Chairman: Yes.

Mr. Bell: The one you read from, from him.

Interjections.

Mr. Barlow: The summary of--

Mr. Goodman: But that wasn't until after his letter.

Mr. Chairman: I'm dying to know the name of the lawyer.

Mr. Philip: It sounds familiar.

Mr. Barlow: It could have been one of your partners.

Mr. Bell: No, I assure you it's not one of my partners. My partners know to stay away from the Ombudsman.

Mr. Shymko: What is the date of the Ombudsman's letter, Maloney's letter, which you read at the very beginning, Mr. Goodman?

Mr. Goodman: That letter is dated October 1977.

Mr. Chairman: Before we get away from this I think it's pertinent that we have the letter that was sent prior to his reference to the topographical survey. Have you got that?

Mr. Goodman: I'm sorry.

Mr. Chairman: We were dealing with the letter that was sent to this gentleman before he replied and made reference to the topographical survey, just to see if there is any implication in that letter in terms of the requirements.

Mr. Cooke: It refers to the November 1976 letter. If there is no November 1976 letter there has got to be a letter



around that period of time, though, that he then replied to.

Mr. Goodman: No.

Mr. Barlow: Mr. Chairman, it would appear to me that this business of the topographical survey has only been raised on September 9 in the letter to you.

Mr. Cooke: No. He read us a a letter where (inaudible).

Mr. Barlow: Yes, where he referred to engineering reports and so forth. But the fact is that the first time that anybody has been advised that it was requested of him, as far as I know, is in this letter of September 9.

Would it not be in the interests of this committee to obtain from him dates when this actually was requested, when the topographical survey that he alleges was requested? As far as I can see right now we certainly cannot summarize this, bring it into line, without having that information.

Mr. Chairman: But maybe to resolve this: to indicate that we are in agreement with the fact that the Ombudsman does not have jurisdiction in this area, we would appreciate receiving additional information in terms of your requirement for the topographical survey.

Mr. Bell: Saying that on review with the Ombudsman's office it appears that no request was ever made of that office, nor was there anything that might have led him to believe that they required a survey, and if the gentleman has any additional information, like a letter of November 1977, we are sure he will come forward with it.

Mr. Chairman: Can we leave it that way?

Mr. Goodman: I have a letter of November 10, 1976, in front of me. I have located it, and I can read it if you like. There is absolutely no reference to any survey.

Mr. Bell: Is there reference to any--from whom to whom?

Mr. Goodman: It was a letter to the complainant from me.

Mr. Bell: Is there any request by you for any additional information from the gentleman?

Mr. Goodman: None whatsoever. The letter concludes, "As soon as Mr. Maloney has had an opportunity to further consider the matter I shall contact both you and your lawyer in order that the meeting which you request might be arranged."

Mr. Bell: What was the purpose of your writing that letter to him?

Mr. Goodman: The purpose of the letter was to again reiterate that we had earlier advised him on May 26, 1976, that we had no authority to investigate decisions or orders made by or

reached by courts, and therefore, we had no authority to investigate the decision of the divisional court; further, that, since an appeal was taken from the decision of the Land Compensation Board, the Ombudsman has no authority to investigate the decision of proceedings before that board; and that I understood that the Supreme Court of Canada, no less, dismissed an appeal from the decision of the court of appeal without reasons in early 1976; that we couldn't investigate the actions of legal advisors of counsel to the crown, and therefore we couldn't investigate the actions of counsel for the Attorney General in seeking to enforce the order as to costs, but that Mr. Maloney had agreed on an informal basis to see if anything could be done about that.

Mr. Chairman: Okay. Well, I think we have exhausted this one. We are all in agreement what procedures we'll follow? Okay. Fine.

We can allow you to depart at this point. Thank you very much for your assistance and co-operation. I hope you will convey that to the Ombudsman. Especially, Brian, you personally have sat through the entire proceedings with us, and we thank you personally.

Mr. Goodman: Thank you very much, Mr. Chairman, members of the committee. I certainly would like to thank you on behalf of myself and the members of our staff who have had the pleasure--and I call it a pleasure--of appearing before the committee. We were very pleased with the reception that we have received and that a full and fair hearing of all the issues necessary for your consideration has been obtained.

I wish to assure you of our continued co-operation, and if there is anything further that you require we will be of whatever assistance we can. There were occasions during the course of the proceedings of the committee where our exchanges might have been a little heated, but I wish to assure you that--

Mr. Chairman: We're tame compared to what we used to be.

Mr. Goodman: That's right.

Mr. Philip: We're all green on the committee. Now that we know our way around wait until the next time around.

Mr. Goodman: Thank you again for your consideration.

Mr. Chairman: Members of the committee, maybe we can deal, before we break, with what we are going to do this afternoon in trying to wrap things up today, if possible. It's almost 12:30 now. We could look at reconvening at 1:30.

I just want to toss that one out and see what the reaction is. It would give us a little extra time. Perhaps John could run through just exactly what we will be dealing with this afternoon.

Mr. Van Horne: Some of the people who left understood it would be at 2 o'clock, so you may run into problems.



Mr. Chairman: That's right.

Mr. Bell: What I would like to do, members of the committee, is go down the agenda point by point. A lot of it is a review of what I have perceived as a consensus on many items--all of the items in A, for example. Now it's just a question of making sure that that is understood, so that I have got some instruction to put the text of the draft report together for your consideration in the next two or three weeks, perhaps.

However, in terms of priority, I think you ought to deal with and deliberate the two recommendation-denied cases, being 24 and 25, in his eighth report. They are the two Workmen's Compensation Board ones. Can you arrive at a consensus as to your conclusions and whether any recommendations are appropriate? I would prefer we do those two first and then we start back at number one on the rest of the agenda and just go through it.

A lot of it can be skipped over very quickly. I think you could do part A in about five minutes. Let us get as much done as we can.

Mr. Philip: Mr. Chairman, I forget whether number 24 is the one of the 84-year-old--

Mr. Bell: Twenty-four.

Mr. Philip: That one I think we should be dealing with in camera but one of the outstanding cases, since there are so many people out there who are affected, and all of us probably have constituents who are part of that group and, since they will no doubt be wanting to know exactly how we dealt with it and, since we are not dealing with a specific case but rather with a set of principles, if you want, or procedures, I would suggest that in dealing with that we not deal with it in camera but that we deal with it in an open, public way so we can let those people know exactly what it is we were able to arrive at.

I would be open to having an informal discussion before we go in camera on some possible courses of action we might take and then go public with the discussion on it, or simply be public then for dealing with the whole matter.

Mr. Chairman: Your point is well taken. I do not know think there is any disagreement with any of the other members of the committee. I felt we could deal with that one, initially, in public and from that point on go in camera.

Mr. Cooke: I do not like to disagree with my colleague. I am just wondering what the implications are for dealing with cases in public, especially--and this is not meant to be provocative--but especially when you have a majority government, when this committee is supposed to be a nonpartisan committee and when it is even easier in a majority government to become politicized.

I am wondering what effect that would have in dealing with this case in public. There is a tendency to become politicized and

become partisan when you are dealing with it in that way.

Mr. Philip: The case we are dealing with is in one case, and therefore, some of the rules we would normally follow in dealing with a specific case, I do not think apply. What we are dealing with is a set of principles, really, that happen to affect a lot of people. That is why I think it is legitimate to deal with it in a public way.

Mr. Cooke: Trying to reach a consensus.

Mr. Bell: The committee last time deliberated publicly and formulated a recommendation right in front of the Workmen's Compensation Board that it would support a particular recommendation of the Ombudsman and told the board right there: "All right, you have it. You know what it is. We do not want another year's delay. Go and do it." They did it. That is the fourth recommendation in the eighth report.

The feeling of the committee at the time was that, where there is a perceived consensus as to a result, do it publicly and do it then. Where there is not a consensus and discussion is required, go into your in-camera session and thereby obtain the appropriate result in the circumstances.

I perceived that on the issues that transcend number 25, there is a form of consensus. You have to consider two things. What, if anything, do you do and say in respect of the Legislature's refusal to accept number six in the last report and, flowing from that decision, what are you going to do with these 135 that, frankly, have been dumped in your lap? I do not see any problem and I do not see any precedent setting where you are concerned.

Mr. Philip: The other matter that I feel we have some consensus on--we may come up with different procedures, but basically we agree in principle and that we could deal with publicly is Mr. Renwick's resolution.

Mr. Bell: I think you have done it now. I do not think you have to say anything more about it, perhaps settle upon an appropriate wording.

Mr. Philip: Okay. Lastly, what about the agenda that we will be setting up for the fall? You are around here for a few years and you forget, one season runs into the other. What about for the winter and spring session then?

Mr. Bell: You may want to hear a couple of speeches from counsel to assist you in formulating an agenda.

Mr. Barlow: Perhaps we could have some more statistics that we could deal with.

Mr. Chairman: Let us break and come back at two o'clock.

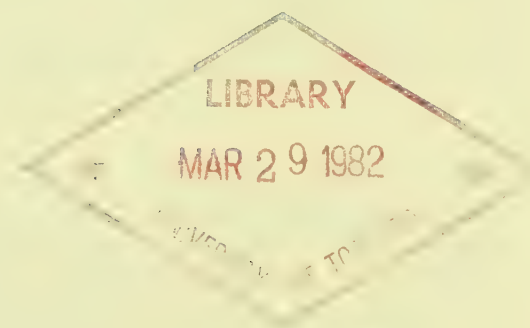
The committee recessed at 12:33 p.m.





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SELECT COMMITTEE ON THE OMBUDSMAN  
OMBUDSMAN'S EIGHTH REPORT  
THURSDAY, SEPTEMBER 17, 1981  
Afternoon sitting





SELECT COMMITTEE ON THE OMBUDSMAN

CHAIRMAN: Runciman, R. W. (Leeds PC)  
Andrewes, P. W. (Lincoln PC)  
Barlow, W. W. (Cambridge PC)  
Boudria, D. (Prescott-Russell L)  
Cooke, D. S. (Windsor-Riverside NDP)  
Dean, G. H. (Wentworth PC)  
Eves, E. L. (Parry Sound PC)  
Kells, M. C. (Humber PC)  
Miller, G. I. (Haldimand-Norfolk L)  
Philip, E. T. (Etobicoke NDP)  
Shymko, Y. R. (High Park-Swansea PC)  
Van Horne, R. G. (London North L)

Clerk: White, G.

Counsel: Bell, J.

SELECT COMMITTEE ON THE OMBUDSMAN

Thursday, September 17, 1981

The committee resumed at 2:18 p.m. in committee room No. 1.

OMBUDSMAN'S EIGHTH REPORT  
(continued)

Mr. Chairman: The committee will come to order.

Mr. Bell: Mr. Chairman, it was decided this morning that at least two items would be dealt with by committee in public, one of them being the resolution of the Legislative Assembly, May 29, 1980; the human rights resolution of Jim Renwick's, as you recall.

Just to summarize, I do not think there was any doubt that the unanimous consensus of this committee was that the work started by the previous committee would be completed by this committee, including hearings with a number of named groups, and thereafter, a deliberation and the formulation of a report.

The question remaining, it seems to me, was one of how should this be done, specifically whether and to what extent the committee should obtain the consent of the Legislative Assembly before embarking upon the task. I think Mr. White has taken the time to prepare a memorandum to you and to the committee members, suggesting one of two alternatives. Maybe he has distributed that.

As I said yesterday, I understand Mr. White's purpose and the concerns that he has. I should say that I not only understand but in some ways I can identify with those. I think that the suggestions outlined will accomplish the same end that we discussed yesterday; that is, just saying we are going to do it and not ask for permission.

Our only reservation is to alternative number two, the information being given to the House leaders and the request that an order of reference be amended. The suggestion as to the House leaders is well taken; I think all parties should speak to their respective leaders. I would urge the committee not to seek an amendment to its term of reference but merely to seek a restatement, if you will, or a fresh vote on the resolution as presented by Jim Renwick on May 29, 1980.

It has been my experience that it will be easier to obtain that than a technical amendment to the term of reference. In any event, when the report is debated you will obtain that approval, or that resolution will be again passed and there is no further step required. You can get on about your business. Those are the only comments I have about that, Mr. Chairman.

Mr. Philip: If we choose item B, we can also include in our report that we have done that.

Mr. Bell: I contemplate that this will be the very first



part of the next report, embodying this motion. This is the motion passed and you will be asked--I would say it should be placed in the form of a recommendation that the Legislative Assembly pass, once again, the resolution of May 29, 1980, the motion tabled by Mr. Renwick and seconded, I believe, by--

Mr. Philip: Wait a minute. If we do it that way, then what we have done is item A, because the moment he moves adoption of his report, that being part of the report, there would be no need for the government House leader to introduce a motion.

Mr. Bell: Perhaps you are right.

Mr. Barlow: Unless there is something contentious in the report that creates a delay in debate and so forth.

Mr. Philip: The one hazard is, if there is something contentious in the report, if perhaps the government side of the House or a majority of members vote against, then it stops the adoption of the report including this resolution. Whereas if we go the House leaders' route and simply mention in the report that the clerk was instructed to ask the House leader to introduce a motion, we get around that.

2:20 p.m.

Mr. Bell: If we do it in the form of a recommendation, we get around it too, because the committee of the whole House considers recommendation by recommendation, and they pass, as they did last time, five out of six, for example. You are right; if you just make it part of the report, you run the risk that the report in total will get defeated.

Mr. Chairman: We have a proposed motion. The clerk has suggested a motion here. Do we have someone who is prepared to move that?

Mr. Philip: I move motion B.

Mr. Chairman: The clerk is suggesting the complete recommendation be embodied in the motion.

Mr. Philip: Okay.

Mr. Chairman: Any questions or comments on that motion? We are all absolutely clear that the motion starts that this committee is strongly and unanimously of the view--

Mr. Cooke: Why are we passing A and B?

Mr. Andrewes: Mr. Chairman, could I suggest that the motion be read so we have it on record?

Mr. Chairman: Mr. Philips moves that this committee is strongly and unanimously of the view that the important work begun by its predecessor committee in accordance with the resolution of the House should be completed by this committee and that the chairman be authorized to inform the House leaders of the three

parties and request the committee's order of reference be amended by motion in the House.

Mr. Philip: I think that that is what I moved.

Mr. Shymko: Are you making specific reference to the expansion of our mandate with the Renwick resolution?

Mr. Philip: The Renwick resolution is broad enough that we can do practically anything in that field.

Mr. Bell: I am sorry; I do not want to get you people in some difficulty when you get to the House. I think what you should do is decide whether the committee, through the chairman, should go A or B, and then pass the motion. If you want to do it formally, you have two motions. But you are not going to help the chairman by giving him an A or a B, and you are not going to help the report, because you have to decide A or B; so do it all at once.

Mr. Andrewes: With great respect, Mr. Chairman, I thought that was what Mr. Philip's motion was.

Mr. Bell: I thought Graham said the intention was that the whole thing be (inaudible). It is not going to work.

Mr. Chairman: Okay. We understand the motion, and we are talking about recommendation B. All in agreement?

Mr. Cooke: I just do not understand the process. Why can't we pass a motion in the House? The House leaders will become aware of it. We do not have to put something in our report that says we are telling the House leaders. We pass a motion in the House giving us the authority to discuss this matter. We do not need to ask the House leaders. It naturally will come up in a House leaders' meeting.

Mr. Bell: How are you likely to have it done quicker? The B route or report route?

Mr. Philip: We could wait a long time for that report to come up for debate in the House. This way, immediately it goes to the House leaders, and the government House leader introduces a motion on the first few days of the House.

Mr. Cooke: We are not going to be able to do the work until next year anyway.

Mr. Van Horne: Mr. Chairman, if we go back to Mr. Cooke's point, the passing of this today would help the House leaders move on it rather than set it on the shelf. If they understand when they get back in business in October that this committee has unanimously agreed to this, I do not think there would be any question. This is just greasing the skids a little.

Mr. Cooke: If this committee is going to be meeting next year, if we decide our schedule and the committee decides its own schedule, all we need is authority to consider one item.



Mr. Van Horne: It is the formality; that is really all it is.

Mr. Philip: Will it come as a government motion or will it come as a committee report? I do not think there are any ejaculations to be gained one way or the other.

Interjection: Do you want to rephrase that?

Interjection: Or spell it.

Mr. Philip: I used it purely in the theological sense of obtaining extra merit in heaven or in the whatever hereafter.

Mr. Chairman: I think we have dealt with that adequately. Next item, Mr. Bell.

Mr. Shymko: Can I just go back, Mr. Chairman? Is our recommendation including the preamble in that entire statement which I see on this page?

Mr. Chairman: It starts with "That this committee."

Mr. Shymko: But anything before that is just an explanation.

Mr. Chairman: It is not part of it.

Mr. Bell: What I will do for you in the draft report is make reference to what we have done in a couple of nice words to the House leaders, hoping they will act quickly without making any other recommendations.

The next item that was decided you would deliberate in public is the resolution of detailed summary number 25 in the Ombudsman's eighth report. That is found in your brief at tab C, number 9(II). I guess that is CH9(II).

Members of the committee, you will recall this is referenced by the report by the Ombudsman to the Workmen's Compensation Board that, in respect of 135 complaints made to his office concerning decisions of the Workmen's Compensation Board, the board reconsider each of those decisions in light of the select committee's recommendation number six in the eighth report, i.e., "that an assessment of a permanent disability under section 42(1) include all relevant circumstances and not just a clinical evaluation of the nature and extent of the injuries suffered."

It is obvious, and you were informed by the Ombudsman's representatives that this recommendation and report were issued before the Legislature debated the recommendation, that it was made with Mr. Morand's expectation that the recommendation would be adopted and approved by the House.

The Hansard debate of May 14, 1981, records that the Minister of Labour and the Workmen's Compensation Board could not accept the committee's recommendation. It appears due substantially to legal opinions received, one from Mr. J. J.

Robinette as requested by the Workmen's Compensation Board and the second from the former Deputy Attorney General, Mr. Allan Leal, at the request of the Minister of Labour.

Both opinions supported the interpretation of the Workmen's Compensation Board that the only factor they could and should consider in assessing the permanent disability under section 42(1) was the clinical evaluation. It is not apparent that there is any other reason in the debate for the decision not to accept the recommendation and for the Legislature's decision not to adopt and approve.

2:30 p.m.

You might recall earlier in the week I referred to page 716 of the debate that day where Dr. Elgie said, "It is not possible, on a recommendation contained in a select committee, to alter the substantive truth and reality of the law." It further goes on to say: "This Legislature cannot overrule the interpretation of the statute. We cannot operate on the basis of what we think something else should be, because we are now in the midst of reviewing recommendations to reform the Workmen's Compensation Act."

That is background as to why recommendation number six was not adopted and approved. The Ombudsman assured you that the issue in the 135 cases is identical to the issue addressed by recommendation number six, i.e., the manner in which section 42(1) is interpreted and applied by the board.

There are some further complicating factors, however, in that the 135 cases at the time Mr. Morand issued his report to the Workmen's Compensation Board were never investigated or processed in accordance with the usual and accepted practice of the Ombudsman, i.e., the issuance of a section 19(3) letter and receipt of response from the Workmen's Compensation Board, the issuance of a 22(3) report setting out in detail the facts disclosed by a particular investigation with an opinion of the Ombudsman as to the results of that investigation and its specific recommendation going to each of the 135 decisions; and thereafter, a specific response by the Workmen's Compensation Board to the Ombudsman's report on the merits of that individual report and everything it contains.

There has been a lumping together. Further--and the Ombudsman's office confirmed this--the recommendation in no way dictated or suggested the manner in which the 135 decisions should be altered or varied. It merely asked, and I am reading from the report, that "the appeal board consider all the cases and obtain all information necessary to assess the worker's impairment of earning capacity and that the board alter its practice to take into consideration factors indicative of the actual impairment of earning capacity when assessing a worker's permanent disability award."

It is very clear that the results of the reconsideration were left to the discretion of the Workmen's Compensation Board. However, Mr. Goodman indicated the Ombudsman wanted to reserve his position on what the board did with these cases intending, I would



expect, that if some cases were not altered at all he would in some way inform the Legislature and this committee that he was dissatisfied.

You will recall Mr. O'Brien made the point that the handling of these 135 cases was unusual and that he believed it was incumbent upon the Ombudsman, if he were going to make any recommendations on any of these cases, that there should be some individual investigation and assessment. I should tell you that the handling of these 135 cases in this way is unique in the committee's experience.

It also seemed to me that, in making the recommendations as he has, the Ombudsman would have some difficulty to convince the committee that whatever the board decided was inadequate or inappropriate. When you ask somebody to "reconsider all the cases," you have a difficult time criticizing the result of the reconsideration, at least in the context of the Ombudsman Act.

Further, you cannot disregard a decision about what you are doing to do about recommendation number six. Speaking for myself, the Legislature has spoken. Obviously there is not anything this committee could do or say or recommend that would change that decision. Effectively, that decision confirmed the Workmen's Compensation Board's procedure in this regard. So you are faced with that reality, that until there is a legislative amendment, 42(1) will not be applied in the larger context as the Ombudsman would hope and which the committee had recommended.

Mr. Cooke: Unless the courts rule otherwise.

Mr. Bell: Well, as I am saying, unless there is an amendment or a more weighty interpretation placed upon that section than the government has accepted so far.

One possibly, of course, is to say, "All right, note what happened to recommendation number six and get on to do other things." Implicit in that is a decision that you are not going to do anything with the 135. I do not believe it is appropriate for you to do that, for two reasons. There has been somewhat of an abrogation by the Ombudsman and his office of their function under the act of the 135 cases. There is a streamlining that has taken place.

Mr. Philip: Great way to catch up.

Mr. Bell: They have dumped it on this committee's lap, I think, more than has happened before and, I would say with respect, more than is appropriate. You could consider sending them back to the Ombudsman for a specific investigation and specific recommendations that are appropriate flowing from the investigation. Or you can just take the bit in your own teeth. You now have the 135; you could consider asking the Workmen's Compensation Board to do whatever is available to them within their interpretation of the act.

2:40 p.m.

In that regard--I reminded you yesterday or the day before--you heard from about four board representatives that one section is never considered excluded from the others. When they assess whether somebody is going to receive a benefit, they assess not only one but five, and with each case, we are told, a decision is made whether the permanent disability is to be supplemented. I hear what they say. It would be my judgement that, as these are done at the administrative level, there is not a lot of attention paid to number five; the emphasis is on number one.

If you asked the board to reconsider all of the 135 cases with particular emphasis on subsection five and that at the same time the Ombudsman be given an opportunity to submit any additional information he may have within his file--with the full understanding, of course, that what the board does with that is the board's judgement--I do not think you have done any less than the Ombudsman has recommended, and you may have done a lot more.

Mr. Cooke: But the Ombudsman would then have the opportunity to measure complaints.

Mr. Bell: What you have done is that in your next agenda you have automatically put 135 cases on top to consider.

Mr. Philip: I think what we have here are four issues involved and possibly four recommendations. One is the broader issue that it is possible for this committee to recommend certain changes or amendments which might take place in the new act when it comes out; that is including the possibility of it being retroactive to include those 135 cases.

The second is that we find that the Ombudsman is in the very fortunate position now of having "the cases caught up," but really we have 135 cases that have been dumped. We are going to have to come to grips with sending that back to him and having each of those cases looked at.

The third thing is the whole matter of the Workmen's Compensation Board examining it, as counsel has said, in a broader light and paying particular emphasis on subsection 5.

The fourth area that we might consider is a recommendation that the Attorney General, whatever the procedure is, have the matter tested in the courts concerning 42(1).

I suggest that, if we move in those four directions, we will have covered it. If the government comes in with retroactive legislation fairly quickly, it may mean that some of the other three are not necessary and a lot of work can be stopped.

I throw that out as four possible areas we can go in. If we take all four, it may at some point not be necessary to do all four, depending on which one comes in what order. At least if we do all four, then all avenues are blocked off in terms of giving these people some kind of justice.

Mr. Shymko: In listening to the four possible steps that Mr. Philip just presented, I see that the only reasonable option



would be to look at the possibility, which is a very strong possibility, of the Weiler report and its recommendations being implemented and in changes in the act--with a retroactive suggestion. Once these changes are made, the 135 cases be reviewed in a retroactive fashion by the Workmen's Compensation Board.

As we listened to the presentations yesterday, certainly with regard to point three, the Workmen's Compensation Board indicated quite clearly that they apparently did apply all of clause 42--or is it called 43 now?--both 42(1) and 42(5) in every case, and this would simply be an exercise in futility if we were to send it all back to the board.

As far as the Ombudsman is concerned, with reference to the second step, the Ombudsman apparently felt that it all fits into the one category, being lumped together, and there had been an opinion or an interpretation of the law which applied to all 135 cases. I do not think we will solve the problem by sending it back to the Ombudsman's office.

With reference to the courts, I am sure we were all contemplating the possibility of sending it to the courts, but it may be a long, drawn-out process which, in all fairness, will do more harm to the particular cases if this is before the courts than the speedier process of the first proposal. So I would perhaps urge the committee to study possibility number one in the list that Mr. Philip presented and maybe discuss that to see if that would be the viable option.

Mr. Chairman: Instead of retroactivity in the new legislation that you are talking about?

Mr. Shymko: Yes. We can, as a committee, suggest that when these changes are implemented in the act that all of these cases then be reviewed by the board with retroactive application of the results.

Mr. Cooke: I do not think it will be futile to send it back to the Ombudsman. There has been no one really look at each of these cases on a one-to-one basis to see if there has been compliance or a 42(5) to see if there has been any emphasis or any flexibility so that section of the act has been applied to these individuals. There should be someone--the Ombudsman should be the one to do it--looking to see whether, if that section were applied and emphasized, anyone would benefit. I think that would be worthwhile.

The retroactivity is fine. I do not understand your argument that, if this matter were referred out to the courts for interpretation, this would hold things up. We can still recommend retroactivity and, if the government comes in with that, then fine; there would be no need to worry about the interpretation of section 42(1).

Mr. Shymko: If you send it to the courts, it is obvious that the Ombudsman's office cannot be investigating it any more.

Mr. Cooke: The Ombudsman can look at it. Of course they can.

Mr. Shymko: Can they while it is before the courts?

Mr. Cooke: Of course.

Mr. Philip: It would not be sub judice, because what they are investigating is--

Mr. Cooke: They are not going to be looking at those cases in the courts.

Mr. Philip: It would be the Ombudsman.

Mr. Cooke: The courts will not be looking at each of those cases. The courts will be looking at a section of an act and interpreting the act. There would be nothing to hold up those cases under section 42(5).

Mr. Shymko: Apparently the implication is that every case is indirectly dealt by the matter that is before the courts.

Interjection.

Mr. Shymko: I am not a lawyer; I would not know about that.

Mr. Philip: I am not either, but I had a very quick course in sub judice in the justice committee. My legal opinion to you would be that this would not be sub judice.

Mr. Bell: The Ombudsman is not affected by the rule of sub judice.

Mr. Philip: Oh. Now I have improved my law knowledge even more, you see.

Mr. Cooke: When we were considering counsel for this committee if we ever knew that our counsel was going to agree with Ed Philip about something I think--

Interjections.

Mr. Bell: If I could jump in, the only problem with the amendment matter and making it retroactive is that if you do that you have really cut out two and three because, I will tell you, if you send it back to the Ombudsman they will probably say, notwithstanding sub judice, they would like to wait upon the results of the legislative amendment because if it is enacted retroactively they do not have to investigate; they just send these people to the board again.

Mr. Philip: Our resolution says that they commence their studies immediately, and they cannot do that.

2:50 p.m.



Mr. Chairman: When is this legislation expected?

Mr. Bell: It is only at the white paper stage. The Ministry of Labour prepared the white paper in response to Mr. Weiler's report. At page 68 they recite that: "Workers who were injured previously but who would like to transfer to the new act will have their benefits recalculated on the basis of the actual wage loss. Only such recalculated benefits will be eligible for annual adjustment to future inflation."

It is only the recalculated benefits that will be indexed.

"The injured worker's actual wage loss will be compensated in the same way as if the injury were suffered and compensation awarded after the new act came into effect, but the earnings ceiling applied to these prior injuries will be set at the historical level of approximately 125 per cent of the average industrial wage."

It does not really speak to retroactivity but, in a meeting I had with the chairman and with Mr. Warrington in preparation for these hearings, I asked him about retroactivity. They said that the board had not really taken any official position on that one way or another, but it is certainly retroactivity of that provision in the legislation. It will certainly remove the difficulty with these 135 people.

Mr. Philip: We have a lot of people who want something now. Promising them that some act might be introduced at some future time I do not think is going to satisfy some of their anxieties. They would like to know that their case is going to be reviewed now.

One problem I have with sending it back to the Ombudsman is, quite frankly, amid a storm of statistics. From my perception and understanding of those statistics, although the representatives of the Ombudsman would not admit it, they are at the point now where they have cleared their caseload.

There are 135 cases and, if it were added on to them, I am not sure they are immediately going to cope. I think part of our resolution has to be that the Ombudsman in turn would look at the resources he has and, if necessary, come in with supplementary estimates to hire the staff to process and study those 135 cases expeditiously.

Mr. Cooke: You are speaking of contracts now.

Mr. Philip: Because what we do not want is 135 cases dropped back on them, then all of the other cases being backlogged while these people wait around with undue expectation. The Ombudsman should be instructed that he has to come up with realistic staff figures.

Mr. Arthur Maloney was always clear about needing more staff every year. This Ombudsman seems timid about it. Maybe it would not hurt for us to suggest that in this instance he should come in

with supplementary estimates to hire the people who are necessary to handle this job.

Mr. Chairman: The most expeditious way to handle this--you have made separate proposals before; I wonder if you could deal with them individually, if you could make separate motions and we will handle them that way.

Mr. Philip: Okay. I will make the motion.

My first motion would be that this committee ask that the Attorney General refer to the courts a final decision on the matter concerning 42(1). Perhaps counsel can add a few words and make that more clear.

Mr. Chairman: Okay. We have the gist of the motion.

Mr. Shymko: I guess we are discussing that motion now. I understand the mandate of this committee is to study the Ombudsman's report, then to report to the Legislative Assembly and accept the Legislative Assembly's ruling on the report. If we understand that the Legislative Assembly interprets a law and an interpretation had been given, I do not see why our select committee should--what we are doing is questioning the Legislative Assembly's decision on this by passing it on to the courts.

Mr. Cooke: Legislative bodies in general make law; they do not interpret it. The courts interpret the law.

Mr. Shymko: Basically, there was indirectly an interpretation. The understanding was that the statute--the Legislature cannot overrule the interpretation of the statute, is what was the statement made.

Mr. Cooke: But there has been no interpretation by the courts.

Mr. Philip: The only interpretation we have had is two legal opinions obtained by the Attorney General.

Mr. Cooke: And the Ombudsman, who is a well-known lawyer, interprets in a different way.

Mr. Bell: Can I assist by reading Mr. Elgie's statement in the House on May 14: "Both the board and my own ministry have obtained legal opinions. It is with a degree of regret that I have to inform members there is disagreement, not only with the opinion of the Ombudsman and with the opinion of the select committee in this regard, we believe and the board believes that point of view has been well substantiated by legal opinion."

"It revolves around the interpretation of section 42(1) and whether that section relates only to a permanent pension on the basis of a clinical assessment or whether such determination regarding a permanent pension should also take into account the earning capacity." Then he goes on to read the two legal opinions into the record.



That is the context of the two opinions, and it seems to me substantially the decision that the Legislature took.

Mr. Shymko: Let us suppose that we refer this to the courts and the courts' interpretation will be in favour of the decision of the board; I guess we accomplish at least the satisfaction of having this matter gone right to the top.

Mr. Philip: That does not prevent the second resolution, which I believe you said you were in agreement with, which is suggesting that future legislation be retroactive--future legislation, notwithstanding the interpretation of the present legislation, if you like.

Mr. Shymko: In other words, you are giving yourself almost a safety valve there just in case of the failure of--

Mr. Philip: If the government does not like the interpretation and they say, "We cannot do anything for these people under this present interpretation," they still have the option when the new act comes in of making it retroactive.

Mr. Shymko: Should such changes be implemented.

Mr. Philip: Yes. If the court decision comes in and it is in favour of them, then the changes do not need to be retroactive if they want to make them.

Mr. Chairman: As pointed out, this has to go to the Legislature for approval and then to the Attorney General.

Mr. Shymko: But with our suggestion, in other words, our committee will simply suggest to the Legislature that this be referred to the courts. Whether or not that suggestion or recommendation of the select committee will be accepted is another question, is it not?

Mr. Philip: That is right. That is a possibility.

Mr. Shymko: It may fail right there on another vote. There will be a division and a vote taken and you are facing a dead-end street.

Mr. Cooke: That is the case with anything we recognize.

Mr. Barlow: Mr. Chairman, I do not think I can support this recommendation. I would support, certainly, recommendation number one as we discussed before; that is, the necessary change in the act along with the retroactivity.

Mr. Chairman: The motion now is--

Mr. Barlow: I realize that; what I am saying is that I am prepared to support a subsequent motion, but this one, recommending that it go to the courts at this time, I am afraid I just cannot support it.

Mr. Chairman: Any further comments on this motion?

Obviously we have a division. Will the clerk of the committee reread the motion?

3 p.m.

Clerk of the Committee: I have some rough wording, subject to counsel's views.

Mr. Philip moves that the committee ask that the Attorney General refer to the courts, under the Constitutional Questions Act, an interpretation of section 43 of the Workmen's Compensation Act, relating to the point of law at issue with respect to recommendation six of the select committee's eighth report.

Mr. Chairman: All in favour of the motion?

All opposed to the motion?

I guess I have to break the tie.

Mr. Philip: One hundred and thirty-five people are resting on your shoulder, Mr. Chairman.

Mr. Chairman: You do not have to. I will support the motion.

Mr. Philip: Second motion: I move that we advise the Ombudsman that we--I move that the committee send this matter back to the Ombudsman, that the 135 cases be re-examined and that--

Interjection: Want any help?

Mr. Philip: --let us do the workmen's compensation one first and then we will--I move that the Workmen's Compensation Board be requested to re-examine the 135 cases, with particular emphasis on section 41(5) of the act; section 42(5) of the act.

Mr. Barlow: It is now 43(5).

Mr. Philip: The clerk will put in the appropriate numbers.

Mr. Andrewes: You are moving that the committee recommend that the Workmen's Compensation Board review the 135 cases.

Mr. Philip: Yes.

Mr. Chairman: This is what Mr. Warrington referred to as an exercise in futility.

Mr. Shymko: This is in light of at least accepting the credibility of the witnesses from the Workmen's Compensation Board who said that they, in fact, did look at each case in applying it.

Mr. Philip: I think, if you check the testimony, there was conflicting testimony on that. Initially, they seemed to indicate there was a greater emphasis on 42(1), and later they



seemed to contradict their earlier testimony; so you have two different opinions.

All we are doing is saying, "We are a little confused as to what you really did say yesterday; so we want you to redo each of the cases with a particular emphasis on 41(5)." That actually goes farther than even what their later statements were. I believe that the farthest--they said later on in the testimony yesterday--that they went was that 41(5) was part of their considerations. What this one says is that they place a greater emphasis on 41(5) than on other parts of that section.

Mr. Andrewes: Why do you not say that in the motion?

Mr. Philip: I did say that. I said with particular emphasis on 41(5).

Mr. Shymko: I just wondered, in light of the decision in the legislative chamber on this whole question, whether the board's review of this will really be serious. They will look at a decision which was reached in the spring, May 14, and simply restate their position in every case.

Mr. Chairman: That is my concern too, and I gather what Mr. Philip is going to propose is his third motion, that the Ombudsman's office also review these cases. I do not see the necessity of having both bodies review 135 cases. I think we should zero in on one which we feel is most appropriate.

Mr. Shymko: This is why I think it would make more sense in terms of the Ombudsman's office, which is not positively disposed in accepting the May 14 decision in the House, but which most likely will go through every case and do a better job than to send it to the Workmen's Compensation Board. It would make more sense to me if we do.

Mr. Philip: I think your point is well taken, and that is why I shifted around what I was trying to do in motions. That is why I wanted to deal with the Ombudsman's motion after this one. Perhaps the role of the Ombudsman--maybe counsel can help us--should be not to review each of them but rather to monitor or check the decisions made by the board in their review. In other words, the Ombudsman will have the job of policing to make sure the review by the Workmen's Compensation Board is in keeping with motion two, which I hope will pass.

Mr. Bell: It is obvious you did shift your emphasis. I personally believe that requiring the Workmen's Compensation Board to reconsider each of the 135 cases without some involvement by the Ombudsman's office before that is done will yield the result Tom Warrington predicted. Again, that has just shifted the onus down the line and, instead of the Workmen's Compensation Board and the committee taking the heat, the board is going to take the heat with the 135 cases. I do not think you are doing anybody a service then.

I would urge you, Mr. Philip, to abandon your motion re the board and to consider a motion requiring the Ombudsman to conduct

a full investigation, as the act requires, in each of the cases, and to formulate and submit any report he considers appropriate in the circumstances. That can be a report either supporting the board in any one case or supporting the complainant in any one case.

I have a lot of difficulty with the way in which these matters were handled even if the Legislature had adopted recommendation six. What has happened is that the board has not been given the benefit of the Ombudsman process in each of those cases. They have sort of been told, "You are supposed to apply 42(1) in a broader way; now go and do it." That is not what the Ombudsman process is about, as far as I am concerned.

Also, this report closed on March 31, 1981, and there has been nothing new come out of the Ombudsman's office as to a change in approach or direction as a result of the Legislature's decision re recommendation six. They have just left it with you. I would like to see some effort on their part.

Mr. Philip: I hear you saying two things. One is that the Ombudsman really did not carry out what he should have done. The other is that the Workmen's Compensation Board will not really carry out our motion but will simply repeat their past performance.

The question I have to ask is, what is our objective? If our objective is to get action, then surely with the Ombudsman being instructed to check into whether the Workmen's Compensation Board is reviewing it, with an emphasis on 42(5), would that not be enough motivation for the board to do that in the way we want, having the Ombudsman as kind of a backup?

I am willing to go either way, whichever is going to get the best or fastest results for these people. I have no particular prejudices one way or the other. You have had more experience in dealing with the Workmen's Compensation Board on this kind of global thing than I have had. I am willing to change the motion depending on what is acceptable to the rest of the committee and on the way you feel we can get results.

Mr. Cooke: Mr. Chairman, I think the motion that Ed has been put forward would assume that the Workmen's Compensation Board, under section 42(5), has been wrong in all 135 cases. I am not sure we can assume that, because the Ombudsman has not looked at those on an individual basis. I do not think it is fair, therefore, to the Workmen's Compensation Board.

That is why I prefer the other route of referring it back to the Ombudsman first for an individual look; then we may have to make part of that recommendation that they consider contract stuff.

3:10 p.m.

Mr. Bell: Following on that, if you just refer it to the board, you have no way of assessing whether the decision they have come to is right or wrong unless you reinvestigate on your own, and you are not going to do that with one.



Mr. Philip: I get the feeling, though, that we have a consensus for that route; so I will withdraw my motion and move a different motion, which is that we--

Mr. Bell: If I could assist, I think the motion which can form the substance of one of the recommendations in the report is that the Ombudsman, in respect of each of the 135 cases, further investigate each of those cases as required by the provisions of the Ombudsman Act and that, after the investigation is completed, he formulates such opinions and issues such reports as he considers appropriate in the circumstances. The committee contemplates by this recommendation that what is required by the Ombudsman in each of the cases is a finding either in favour of the complainant or the governmental organization.

Interjection: What does that get us?

Mr. Bell: It gets us this: He will conduct the investigation and make a judgement on each of the 135. On those he finds in favour of the board, he will write to the complainants and say, "We have fully investigated your case and I am sorry I am not able to support you." On those he finds in favour of the complainant, in each case the board will get a report and a recommendation that they reconsider for the following reasons and in the following way; and the board has to address its mind to the specific issues he raises, not to some amorphous request.

Mr. Andrewes: Is that recommendation not going to be that the board reconsider the case based on both clinical evidence and earning ability of the client?

Mr. Chairman: Based on the Ombudsman's interpretation of that.

Mr. Andrewes: Which takes us right back to this reference.

Mr. Bell: That is one possibility. Another possibility is that their investigations might reveal that, from the time of the original decision until the investigation, the degree of disability has increased, which would require an increased section 42(1) disability.

That is a possibility. Somebody could be sitting at 20 per cent now and the Ombudsman might conclude they are entitled to 40 per cent. So he might say, "I recommend that you increase the benefits by the 20 per cent and that you consider a supplementary." They can't tell you what they would do with them now.

Mr. Andrewes: Because they haven't heard any of them. They haven't considered any of them. They have categorized the 135.

Mr. Bell: What they have done boils down to this: Assume that the Workmen's Compensation Board always interpreted section 42(1) as the Ombudsman would have them. They have 135 cases in here; they categorize them as requiring a section 42(1) assessment and they ship them all over and say to reconsider them, without

having made any determination of the merits of each case. It's a nice way to get rid of 135 backlog cases, but the risk inherent is the result we are talking about.

The only other thing I would add to your motion, Mr. Philip, is that the committee would further recommend that the Ombudsman supplement his staff by whatever numbers he considers necessary to have the investigations completed, reported and referenced in his next annual report to the Legislature, March 31, 1982, so that a year from now the committee will be able to assess what has happened.

Mr. Barlow: Mr. Chairman, I wonder whether it would not be better as a supplementary motion so it doesn't bog down in the Legislature.

Mr. Chairman: Maybe you're right.

Mr. Barlow: We might be bogging down in that one long motion.

Mr. Philip: I do not mind if it is one motion or two motions. I would hate to have one pass and not the other. Otherwise, what we are doing is bogging down everything else that is before the Ombudsman as well as these people.

Mr. Andrewes: I think, properly, it should be one motion, because the second part of it reflects on the first.

Mr. Bell: I do not know how he does it; whether you reject the first and pass the second.

Mr. Philip: Do you want to read the motion, or should I just move it?

Mr. Chairman: I think we all understand the intent of the motion. We are keeping it all in one motion. I guess that is the consensus. All in favour? Carried.

Mr. Philip moves that the committee recommend that the Minister of Labour consider implementing in the new act those changes which are required for a greater emphasis on 41(5) and that any changes be retroactive to include the 135 cases which are before this committee at this time.

Interjections.

Mr. Philip: The cases that have been affected by the present interpretation.

Mr. Chairman: The intent of your motion is to tie it down to those 135.

Mr. Philip: The intent of my motion was to make it retroactive and to have an interpretation different from those two interpretations by which the Workmen's Compensation Board is now making their decisions.



Mr. Andrewes: Retroactive to every case which the Workmen's Compensation Board have heard up to this point, or to those 135? Because obviously there have been some that have accepted their settlement and have not appealed their case to the Ombudsman.

Mr. Shymko: Retroactive to any case that would qualify, I guess, according to the changes in the act.

Mr. Philip: Yes. That is what you are asking for.

Mr. Chairman: Let's get this clear. We are talking about retroactivity for only the 135 cases. Is that the intent of your motion?

Mr. Philip: Yes. I think that is a valid point. It would be retroactive to anybody whom that interpretation would have in any way affected.

Mr. Chairman: It is nice to know the implications of that.

Mr. Philip: It does not mean that the Workmen's Compensation Board has to go over each of its cases to find out if it does. It does mean someone who says, "I am in that category and I did not go to the Ombudsman, but I am really affected," because that can happen anyway. At any time any case can be opened before the Workmen's Compensation Board; so, if you make it retroactive, then anyone can come if he feels that he comes under that interpretation.

Mr. Andrewes: I think we need counsel's interpretation, but I feel that if you pass retroactive legislation, Workmen's Compensation Board are operating within the framework of that legislation and it is incumbent on them to go back and review these case without appeal, if in fact you are saying it is retroactive.

Mr. Bell: You are right. They cannot permit a situation to exist whereby some workmen in this province are being paid on a basis other than the retroactive effect. You are right; there would have to be a total review of all of the section 42 payments and every assessment. That is something else. There is another point I wanted to make, but I forget what it was.

3:20 p.m.

Mr. Cooke: But retroactivity is something the government is considering in this new legislation; so it is not as if this kind of recommendation is terribly outrageous or radical.

Mr. Andrewes: I was not suggesting that. I just wanted us all to be clear.

Mr. Bell: I know. I was going to say the other effect of that retroactivity, a potential effect, is that under the new legislation, as I understand it, those people who are presently receiving a 42(1) benefit but are back doing the very same work at

the very same level, will be disentitled. If you make something retroactive in respect of an obligation for the board to pay, do you also make it retroactive that that money which has been paid is to be refunded? That is a rhetorical question. The answer, obviously, for good political reasons, is no. But the whole question of disentitling a lot of people who have been receiving a supplement to their wages does come into question when you talk about retroactivity. I know this is a tough case.

Mr. Shymko: Fairness is the bottom line, you would have to say, retroactively, unless we would qualify that any overpayments that may be affected should not be claimed by the board.

Mr. Cooke: You can always give the claimant a choice of the old act or the new act. That is what they will get. That is what they are suggesting. I am not saying that. That is what was read by the counsel earlier.

Mr. Chairman: Is there any further discussion on the motion?

Mr. Andrewes: Again, where are we going and what are we trying to achieve here? We are trying to achieve fairness for these 135 people, and others like them, so they get a settlement based not only on clinical disability but also on their loss of earning capacity. Do we want to direct or recommend to the Workmen's Compensation Board that they undertake something they cannot live with?

Mr. Philip: That is the role of the government to do. It is going to have to be their act which does that.

Mr. Chairman: We are asking them to consider retroactivity; that is what we are suggesting. They may consider it inappropriate for various reasons.

Mr. Philip: Considerations such as cost and so forth are for the minister to sit down, together with the Treasurer, to work out.

Mr. Bell: Your motion says "consideration," does it? It says consider the making of these retroactive; is that what you are saying? I have no problem with that one.

Mr. Andrewes: How do we go beyond that? That is all we are allowed to do here, just make a recommendation. We are not--

Mr. Cooke: We can say they should (inaudible).

Mr. Andrewes: They have already said that.

Mr. Chairman: The clerk has a motion here. I will just have him read it.

Clerk of the Committee: Mr. Chairman, my understanding of the motion is that Mr. Philip moved that the committee recommend that the Minister of Labour consider implementing in the



new Workmen's Compensation Act those changes required to make retroactive the application of section 43(5) of the act.

Mr. Bell: May I try it with a preamble? The committee notes that in the white paper released by the Ministry of Labour in response to Professor Weiler's first report, entitled Reshaping Workers' Compensation for Ontario, there is provision in intended new legislation that "those workers who were injured previously but who elect to transfer to the new act will have their benefits recalculated on the basis of actual wage loss." The committee understands that such legislation will permit the 135 complainants represented by complaint number 25 to apply to the Workmen's Compensation Board for a recalculation of their benefits more in accordance with the interpretation of section 42(1), urged by the Ombudsman and this committee.

The white paper is apparently silent on the issue of whether the recalculation and entitlement of benefits on the basis of actual wage loss will be retroactive to the date of the commencement of the permanent disability. Accordingly, this committee recommends that the Minister of Labour consider including a provision in the new legislation amending or revoking the Workmen's Compensation Act to provide for the retroactive payment of benefits to workers like the 135 referenced on the basis of actual wage loss.

That preamble is important to set the background.

Mr. Philip: My motions would be an awful lot better if I had counsel's briefing notes, or prep notes or whatever.

Mr. Chairman: All in favour of the motion?

Carried.

John, is there anything else we should deal with in an open meeting?

Mr. Bell: You can really deal with a lot in open meetings. Part A of your agenda, sub B, report of the Ombudsman on his investigation of the South Cayuga land assembly. This committee has reaffirmed the decision of the previous select committee of September 1980 to invite the gentleman who is concerned as to the consequences of the publication of his name in the Ombudsman's reports to appear before it to discuss and describe the manner in which he has been prejudiced or adversely affected. The committee intends to meet with the individual at such time when it settles its winter schedule. That you can deal with.

Communications with members of the public; the fact that you received seven communications from the public all expressing comments and concerns as to certain aspects of the operation and organization of the Ombudsman's office. In each of the cases, the committee considered that the matters referenced would not assist it in the carrying out of its terms of reference, and accordingly notified the members of the public in question. I think you might want to restate an excerpt from your fifth report where you say

you will hear from people but only if the matter will assist you. That takes care of A.

Mr. Chairman: Any necessity for further discussion on those items?

Mr. Bell: No, I do not think there is any need for any further discussion. I am going to read back that amendment, and you have part of the draft report right there. Under item B, eighth report of the committee, comments and responses by the Ombudsman to part of the report. What he said now is a matter of record.

I should tell you that the past committees have considered that the introduction to the report is the most important, where you give an overview as to the process. I would urge you to do that in camera, either today or some other time.

Responses from the governmental organizations to the recommendations contained in the committee's eighth report: the record of the Ministry of Health response--you cannot close that. Well, it is a continuing monitoring situation. That is the Ontario Council of Health report and what are they going to do with it.

The Ombudsman wanted you to include a provision in your next report or to urge the Ministry of Health to invite submissions from members of the public in the continuing process to consider what legislative changes should be made. I don't see any particular need to consider that in private. I don't see any particular need to consider it any more. If you prefer, you could wait upon the text that I prepare.

3:30 p.m.

Ministry of Housing recommendations two and three: Recommendation two is the one that notifies you that, as of October 1, the family in question will get full accommodation and housing; so the Ministry of Housing has complied with that, and you can so note it.

Recommendation number three has to do with the review of their adjudication manuals, decision manuals, with a view to amending them to give more effect to the role of administrative fairness. Mr. Beesley, the general manager, wrote to you and said: "We have been reviewing things like this, any appeal process, since September of last year. We have sought the comments of each of the housing authorities. We have not received them all yet. We hope to have something in place by the end of this year." Again, it is a monitoring situation by you.

Mr. Philip: Can we also make the recommendation at that point that they come back with a detailed report of where these manuals are going to be stored and what access the public--the public being defined as perhaps legal aid, tenant associations and so forth--have to those operations manuals?

Mr. Bell: You can state that the committee understands the manuals now in existence have been made public in some



manner--this committee has a copy, for example--and that the committee will be interested to hear, in addition to what amendments have taken place, when and where the new manuals will be made public. It seems to me that, if there is an appeal process going to be introduced, it makes it awfully difficult not to tell people what and how you are appealing.

Mr. Philip: Can we cross-reference the work or report of another committee and suggest that OHC also report back as to the implementation, if any, of all of the recommendations related to that manual found in the report tabled in the House by the justice committee?

Mr. Bell: You may, Mr. Philip. This committee has cross-referenced recommendations and other reports of other committees. I would only caution that the committee might want to have reference to a report that was adopted by the Legislature as opposed to one that was not. It might be perceived as an attempt by this committee to do indirectly that which the justice committee could not do directly and thereby--

Mr. Philip: Which we failed to do by one month.

Mr. Bell: --being cut off at the pass. But, in any event, I think it is a distinction without a difference that this committee was provided with full copies of those manuals. I should go back to the transcript perhaps, but there was discussion as to the manner in which these were going to be made available. It is part of this committee's process to make some reference in that regard.

Item three, recommendations to the Workmen's Compensation Board: Four was complied with before you even reported last time; I don't think you even have to pay attention to it any more. Five was complied with; you were just never told about it. I believe they are going to send you a copy of a letter sent to the Ombudsman.

Six is the one that was not adopted by the Legislature. You may wish to make some comment about that or just merely to reference it, although what you are doing really with Mr. Philip's first motion about recommending that the Attorney General refer to the question of interpretation of 42(1), I think subsumes or includes that. You are going to have to say why and the reason is you are not--well, I presume to say that you are not taking issue with the Legislature's right not to approve any recommendation of this committee or any other committee. That is the purview of the Legislature.

What you are saying is that it is obvious there is a difference, that there is more than one interpretation capable of, and I think Bob Elgie said that; he said, "We have a disagreement." Maybe the Legislature was right to turn you down when it became apparent that there was more than one point of view. The tie did not go to the runner, it went to the team on the field, and if there is a disagreement there is a way that is set up by statute to find out who is right and who is wrong.

The point is that there is also a former judge of the high court that is in this process as well as John Robinette and Alan Leal. It is the friendly way of resolving differences of opinion on interpretations.

I do not think you have to say anything more than that. You might want to also say that you--I am thinking out loud; the Ombudsman has said that he is a big boy and he recognizes that there will be reports and recommendations that are not supported by this committee in the Legislature. This committee has said that the Ombudsman should be a big boy and should recognize there may be cases which may not be supported. I do not know whether you want to say the same thing in the context of your relationship with the assembly. It is implicit in that in any event.

Mr. Philip: In dealing with the next case we may suddenly prove the point.

Mr. Bell: As I say now, that takes you right through B, Mr. Chairman. I made some notes during the tour of the office and briefing session on item C and if members are content I can set those down in a more formal way and you can look at them when I give you the draft report to decide.

I am sure all of you will be glad to leave me with statistical analysis. I have noted some conclusions that became apparent to me as we reviewed this.

Mr. Philip: Can we talk about some of the conclusions? It is important that you at least know what--

Mr. Shymko: (Inaudible).

Mr. Van Horne: There is a large scar on the end of my tongue.

Mr. Philip: I think it became apparent to me that the statistics did not in any way prove that they were able to cope with the workload. Indeed, if you add on 135 cases, there was really no statistical proof. What they really ended up doing was presenting statistics that indicated that they were short-staffed, I thought, and then them saying they are still able to cope. That may be a comment we might want to make, using some of their statistics in the report.

Mr. Shymko: Mr. Chairman, can I add something with reference to the statistical synopsis, if that is what they called it?

I have never seen such a confusion of statistics in my life. Is there any way to suggest to the Ombudsman's office that they review the statistical format and make it more understandable to average laymen like ourselves? It was very complicated and complex. Except for a few charts they had that made some sense, we could not really make head or tail on the efficiency of some of these areas.

Mr. Philip: I think one of the problems is the way in



which they set them up is not consistent from one year to the next, or at least there are gaps and differences of approach in collecting their data. Would you agree with that?

Mr. Bell: No. I think, in fairness to them, they are trying to improve their reporting system. And they do change; they have changed their program every year. I would suggest that is one of the reasons you felt a frustration, because you cannot compare period to period; it is almost an apples and oranges situation.

I think, also in fairness to them, that the way they have set up their reporting system on the computer statistically puts their work in the worst light, because what they are attempting to do is extract from the reporting system, in terms of backlog and duration, those activities which are really not the core work of the office. What you get is a distillation of the core work, and it becomes more and more apparent that they have more and it is taking longer.

3:40 p.m.

Mr. Morand made a comment that the duration is increasing because they have been in business longer, and that when they were two years old they could not have had a file in the office for three years. Well, I say with respect, that is not an answer, because that is an admission that some files are staying in there for the life of the office. If that is the case, those had better be ferreted out very quickly and dealt with.

The committee, in its second report, made reference to what it perceived as an obligation on every person within that Ombudsman's office to do front-line duty, meaning to get in and process those files that are in the office--everybody. That would include all the directors, the executive staff and even the Ombudsman himself, if necessary. That may bear repeating, not in terms of a finding that they are not doing it now but in terms of a continuing obligation they have to ensure that that backlog does not increase any more and that duration starts to go down.

I think they have taken your comments to heart, Mr. Shymko, and I think what you will see in the next report is a lot more explanation of what these things mean. It avoids the slogging through that we did.

Mr. Shymko: One suggestion is that, on that computer form which they use to gather these statistical data, they might somehow indicate which case has been there for a year, two years, three years. In other words, if they could provide the data on backlog in terms of the number of years and in which area, that would be helpful to this committee in terms of assessing their improvement.

Mr. Bell: I think for purposes of your report you can just make sort of a general comment that the committee reviewed the statistics and urged the appropriate members of the Ombudsman's staff to effect changes to make any future statistical review more meaningful and understandable and to have it broken

down into more categories. They know what they are. They can read Hansard, and you can do it that way.

Mr. Andrewes: Be that as it may, I would not want to leave the impression that we are encouraging the Ombudsman to make additional expenditures or expand his budget in the days of restraint by implying that he needs additional staff and so on. I heartily endorse your comment that we should encourage everybody in that office to take front-line duty and to try to expedite those files and those complaints that are before the Ombudsman now and have been for some time.

Mr. Bell: Well, I will pull out the reference from the second report and I will plug it into the draft; we can have a look at it and decide whether you want to leave it in.

The next is the regional offices. You heard from Gilles Morin, the head of the regional offices, that it is an emerging area of the office, and I think it is there for good and sufficient reasons. One thing that has been discussed, but I do not think collectively, is whether in future the committee would attend and inspect or review the regional offices on its own, which means a trip to either North Bay or Thunder Bay.

Mr. Barlow: (Inaudible).

Mr. Bell: Or spring. I think that is a suggestion well made. I think you should plan some time in the future to do it. It is a cost-saving device of his office. Every regional office that is opened is a saving of a number of plane tickets and a number of hotel expenses. Other than salary and rent, transportation is going to be, I would suggest, his next highest cost in the years to come. So if he can place his forces in an area, it also goes to a concern that you have that it is not only the northern area that feel they do not have full access but also some of the easterly and westerly.

Mr. Shymko: John, (inaudible) reference. David, you commented on the need--or was it Mr. Boudria who made reference to Windsor and other areas? The Workmen's Compensation Board has opened an office in London, and the other one I guess is in Sudbury. Since over 55 per cent of all the caseloads in the Ombudsman's office deal with the WCB--or at least the WCB cases are a big component--it would make sense to me to have one there.

I can understand all the arguments for having two regional offices in northern Ontario. Certainly there is no need to eliminate them or to open up another one but, if there is any project or plan to open another office, I see reasonable grounds for opening one up dealing with southwestern Ontario, the whole area of Windsor and London and so on.

Mr. Cooke: (Inaudible) especially since the auto parts centre is going to Chatham, just a little bit farther west.

Mr. Shymko: I am not going to comment on that.

Mr. Cooke: Right next to my constituency office.



Mr. Bell: Correctional report--

Mr. Cooke: Very low rents in Windsor.

Mr. Bell: You remember that I read into the record excerpts from previous reports where you expressed a belief that you were going to receive something in writing from the Ombudsman reporting upon the whole process when it was finalized, and you were told that you were not going to get that now. They have finished everything but they have not done any closing memoranda to each of the files representing the recommendations, nor have they prepared a paper or memorandum consolidating all the results. You were told that if you want to find out about any of the recommendations to ask them specifically.

You can consider restating those parts of your previous reports and to ask and require the Ombudsman to comply, or you can consider that it is a closed chapter and not make any further reference to it.

Mr. Shymko: (Inaudible)

Mr. Bell: What you will do is, if you require them to consolidate and submit a report, you will add more work for somebody.

Mr. Shymko: I felt there was reference in the select committee's report regarding the outstanding cases, and it would have made sense that in addition to the six referred to in the Ombudsman's report he should have made some mention of how the other were resolved, since 20 were pending. But apparently the ministry has taken care of it. There are results. So there is no sense--perhaps in the future they should not surprise us the way they did.

Mr. Bell: I do not have strong views one way or the other. I sense the committee members do not either.

Next is North Pickering. I always had strong views about North Pickering, living with the chronology as I have. You heard that Mr. Morand, for at least two weeks out of the next four, intends to study, with the assistance of senior representatives of his staff, Mr. Hoilett's report on the North Pickering hearings.

He was unable to tell you what his plans were after that had been done; that is, he was not able to tell you whether he was going to submit the entire report to the Ministry of Housing and ask for compliance--that would be a procedure consistent with the agreement of October 1, 1976--or whether he was going to adopt the formal procedure approach, as is required under the legislation in normal circumstances; that is, issuing a 19(3) report, getting a response, and thereafter issuing a 20(2) report.

3:50 p.m.

The bottom line of the committee's comment upon these matters in the last three reports has been: "Get on with the job and get it finished." May I suggest to you that that be the bottom

line in your comments in here; that, whatever he has to do, to finish it; that he should get it done and get it done quickly, even if he has to sacrifice something else and something else from his senior staff people. This is a classic example of "front-line duty." Those people who are assisting him should stay with that task. There are 100 and some-odd files, and they are the longest-standing files in the office. If you want to leave it to me to do the text for you, you can.

The next is amendments to the Ombudsman Act. In August 1978 this committee reviewed amendments with the Ombudsman Act clause by clause. You were told that was going to be formalized and submitted to legislative counsel and the Attorney General. You have been told that it was formalized and submitted to the Attorney General in January of this year and that there has been no formal response from the Attorney General, although there have been conversations between the Ombudsman and the Attorney General.

You asked for a copy of the amendments. You were told that the Ombudsman preferred not to give them to you. You then asked the Ombudsman to determine if the Attorney General would consent to providing the amendments to you, which was apparently done, and you were told again that both the Attorney General and the Ombudsman prefer that you not receive the amendments at this time. They preferred that we wait upon the process, whatever that is, between the respective offices, leading, I would take it, to a tabling of a housecleaning bill some time in the future.

Mr. Shymko: Do you recall the reason that was given for us not being informed of exactly what the amendments were, what the conflict was?

Mr. Bell: No, I don't. But my sense is that--

Mr. Cooke: He said it might prejudice the process (inaudible).

Mr. Bell: You're right. And I interpret that as, "We are afraid that if you become involved we won't get the amendments we think we're going to get." I don't know what to say. I prefer to say what I want to say off the record.

I think it's a curious anomaly that a select committee of the Legislature that has the name of the Ombudsman is not continued with the process that you started two or three years ago. I wouldn't want this committee to do anything that might prejudice any legislation that will be tabled, and I think you should accept the request of the Ombudsman in that regard.

I'm told by the clerk that there is precedent for a select committee to be given the authority to consider the legislation clause by clause after second reading. There was an example--Graham can help us--of another select committee that had a specific term of reference. Legislation was tabled in the House relating to that specific term of reference, and instead of its going to the appropriate standing committee, either justice or resources, it went to that committee.



Here's a classic example: This legislation would go in the normal way to the justice committee, because it's an Attorney General's bill. I can't think of a committee more aptly suited to consider an amendment clause by clause than this committee--either that or you're all going to have to line up to be witnesses before the justice committee.

You might consider making comments to that effect in your report; you might also consider a specific recommendation that if, as and when the legislation is passed this committee be given the authority to--

Mr. Barlow: Why don't we do it that way, Mr. Chairman?

Mr. Cooke: We could also suggest that the compendium to that proposed legislation include the proposed amendments that went from the Ombudsman to the Attorney General, since we can't possibly prejudice the decision or the process at that point.

Mr. Bell: I don't have anything to say about that.

Mr. Cooke: Well, compendiums are supposed to give you background information, and certainly the process we've been excluded from at this point is background to the bill that will be debated eventually in the House.

Interjection.

Mr. Cooke: Well, we can get it in committee at that point; there's no problem with that. But it would speed up things and--

Mr. Shymko: Since the clerk is here, is there a precedent for passing on a bill that was before a standing committee to a select committee?

Clerk of the Committee: Yes, Mr. Chairman. In 1977, approximately, a new Audit Act was passed by the House, and the public accounts committee took the committee stage after second reading rather than the bill being referred to either the committee of the whole or the general government committee, as might normally have been the case.

Mr. Shymko: Since we have expressed our concern as to why the contents of the amendments were not presented before us, we may want to bring a motion that this committee process the amendments to the Ombudsman's Act.

Mr. Cooke: It's too bad (inaudible) yesterday.

Mr. Bell: I'm not so sure if it's (inaudible). It wouldn't have done any good to do it with that representative. That's in your discussion between the committee and the Ombudsman (inaudible).

If that is the consensus, Mr. Chairman, I can incorporate something into the draft report.

Mr. Chairman: Is that agreed?

Mr. Bell: Before we go any further--we're looking at a 4:30 adjournment--I am going to suggest, Mr. Chairman, that everything else on page two and on page three, down to and including the Ministry of Government Services matter, be left to me to incorporate into the text.

Mr. Chairman: Is there agreement on that?

Mr. Bell: They are very straightforward matters that you have attended to.

The only other item is complaint number 24 of the Ombudsman's report, the report dealing with the dentist. And I would agree with Mr. Philip, who indicated this morning that should be dealt with in camera.

Mr. Philip: Before we go on to that, I wonder if we could have somewhere in the report--it's my feeling that we didn't spend enough time with the Ombudsman, and I really don't have a feeling as to his priorities or the way in which he weighs or looks at things.

I think it would be very useful if this committee suggested that some time be set aside, perhaps in January or February, to sit down with the Ombudsman and go through a series of cases in which we could find out the process that was followed and the positions that he may have taken and that his office took at each of those stages. That could be part of our recommendations.

Mr. Chairman: Is it necessary to incorporate that in the report?

Mr. Bell: Well, you might want to include a provision in the introduction to that effect. I should tell you that the committee in the early stages--reports one, two and three of the Ombudsman--did do that. It did not confine itself to recommendation-denied cases; they were few in number. It took samples of the other cases reported, however they were resolved, and it looked at them; and the committee gained a real insight as to how the discretionary powers were being carried out at all stages.

It wouldn't be a precedent-setting move; it would be a further stage in your briefing, if you will, or a briefing session for yourselves to gain an understanding as to that role and how it's carried out.

It's very easy to do. I think you could take some cases from the eighth report that are recited under the various governmental organizations and you can break those down--those found in favour of the complainant, those found in favour of the governmental organization, those stopped short of final resolution--just to see how--



Mr. Andrewes: Mr. Chairman, Mr. Philip makes his comments in the light of recommendation number 24. I wonder what you were leading to there.

Mr. Philip: No. I made it before we went in camera to deal with 24. It has nothing to do with 24. It's just that I'm still not sure of how this Ombudsman works or operates. It's a pretty important position in this province, and I'd like to know where he stands on different cases and how he would view them. I think it would give me an insight as somebody who is supposedly part of the committee that is reviewing the Ombudsman in its operations. It might also be useful for the Ombudsman to know how members of the Legislature who are dealing with the public also view how he's performing, if you want.

Mr. Cooke: It's essential if there's going to be any real accountability for the Ombudsman, and this is the system.

Mr. Andrewes: You won't get any disagreement from me on that. I wondered whether you were saying that in the light of our counsel's suggestion that we review 24.

Mr. Philip: It in no way indicates how I view 24.

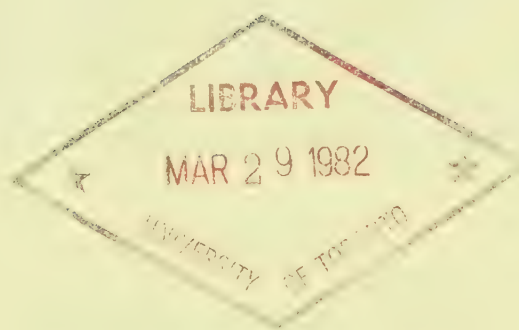
Mr. Chairman: Mr. Andrewes moves that the committee proceed in camera.

Motion agreed to.

The committee continued in camera at 4:04 p.m.

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SELECT COMMITTEE ON THE OMBUDSMAN  
HUMAN RIGHTS  
TUESDAY, FEBRUARY 9, 1982  
Morning sitting





SELECT COMMITTEE ON THE OMBUDSMAN

CHAIRMAN: Runciman, R. W. (Leeds PC)  
Boudria, D. (Prescott-Russell L)  
Cooke, D. S. (Windsor-Riverside NDP)  
Gordon, J. (Sudbury PC)  
MacQuarrie, R. (Carleton East PC)  
Miller, G. I. (Haldimand-Norfolk L)  
Mitchell, R. C. (Carleton PC)  
Philip, E. T. (Etobicoke NDP)  
Piche, R. (Cochrane North PC)  
Shymko, Y. R. (High Park-Swansea PC)  
Treleaven, R. L. (Oxford PC)  
Van Horne, R. G. (London North L)

Clerk: White, G.

Consultant: Bell, J., Counsel to the Committee

From the Office of the Ombudsman:

Goodman, B., Counsel and Special Advisor to the Ombudsman  
Nantais, M., Executive Assistant

LEGISLATURE OF ONTARIO

SELECT COMMITTEE ON THE OMBUDSMAN

Tuesday, February 9, 1982

The committee met at 10:12 a.m. in room No. 151.

HUMAN RIGHTS

Mr. Chairman: Gentlemen, we have a quorum.

Mr. Philip: There are a couple of questions arising since our last meeting. One deals with a matter that we raised and that I would like to bring to your attention to find out if there is any possibility of working it into our schedule. One was that we did ask for a copy of the draft legislation concerning the Ombudsman, which I believe is in the Attorney General's office, and I am wondering whether or not that draft legislation is now available to the committee.

Mr. Chairman: I am not aware of it. Does the clerk have any information on that?

Clerk of the Committee: No, Mr. Chairman.

Mr. Chairman: We can pursue that, though.

Mr. Philip: Specifically, I am concerned about rumours that are spreading, and that I have received from several sources, that there is an attempt to change the age of retirement in that draft legislation. The present Ombudsman wishes to stay on past the age at which he would retire under the present act. I would like to know whether this is happening, where the initiation for any such action is taking place, and I certainly would appreciate receiving a copy of the draft--

Mr. Chairman: I will try to get a report on that.

Mr. Philip: The Ombudsman's spokesman may have some information on that specific question.

Mr. Goodman: No. I have no information.

Mr. Chairman: We will try to get some information on that for this afternoon.

Mr. Philip: The other question that I would like to raise is: Will it be possible for us to speak to the Ombudsman concerning his proposal to visit South Africa, his intentions in this regard, what he hopes to accomplish by it, and any reference that we may have as to the purpose of his trip as seen by the South African government, as well as by his office?

Mr. Chairman: We are going to make reference to that. As you know, the meeting has been called to deal with the House resolution on political rights. All members have had copies and an update circulated to bring them up to date on this. This afternoon



we are going to have our first witness. We set aside this morning to deal with a number of outstanding matters, number one being the Ombudsman's trip.

I have received numerous letters from organizations and individuals, for the most part expressing concern over the trip. I am basing my suggestion on the fact that when Mr. Johnston raised the question of a point of privilege in the House, the Deputy Speaker replied, "I think that the appropriate action would be through the committee on the Ombudsman, so that all members might reflect their concerns directly to him."

I am going to suggest to the committee, and perhaps we can discuss this right now, that we set aside a day next week, and if that is not convenient, perhaps the following week, to discuss that. We will invite the Ombudsman to attend and present his position on just why he feels the trip is important, and his justification for making it. In the interim we have the opportunity to circulate all the correspondence that I have received to the various members of the committee. I think it would probably also be appropriate to send out an invitation to all members of the assembly, if they do have any concerns they wish to express. We will extend an invitation to them to appear before the committee on whatever date we decide upon.

Mr. Philip: That, I think, is an excellent idea, and I congratulate the chairman for having the foresight to arrange for such a meeting.

I would suggest that since the Liberal convention takes place at the end of the week it would be easier on them if our meeting perhaps took place earlier in the week. I know they will be rather busy preparing for it and so forth. Would that be acceptable?

Mr. Van Horne: In response, Mr. Chairman, my own personal preference would be for the meeting to be held some time next week. There is a problem that I have; I do not know how many other people have the same problem. We understand that next Monday will be set aside for the pensions committee, and my understanding is that is just Monday. I do not know if it would stretch beyond that. I doubt it very much. So Monday would be out of the question for me personally, but the rest of the week is okay, with the exception of Friday afternoon.

Mr. Chairman: I was going to suggest Wednesday and Thursday. I do not know if that will create any problems. I know there is a winter policy conference for the PCs being held in Kingston on Monday and Tuesday.

Mr. Van Horne: I can make the Tuesday.

Mr. Boudria: Monday sounds fine to me.

Mr. Chairman: The Thursday might not be necessary, depending on how we move along on the matter of political rights and the House resolution. We may be able to wrap that up this

week, and the second day may not be necessary and we will only require the one day to deal with the trip.

Mr. Philip: I think Wednesday is certainly acceptable.

Mr. Chairman: Is there a consensus on that, Wednesday of next week?

Mr. Philip: To deal with the Ombudsman's trip to South Africa.

Mr. Mitchell: Certainly for myself that is acceptable.

Mr. Cooke: Do you mean next Wednesday?

Mr. Chairman: Yes.

Mr. Cooke: I wonder if we can look at another date. I am going to be out of the country next week.

Interjections.

Mr. Piché: Is it necessary to have any meetings next week? Unless I am missing something here, is there no chance to complete the work that we have in front of us this week?

Mr. Chairman: It is possible.

Mr. Piché: Or send it to the following week, because so far I am not going to be attending the Liberal convention. I shall be in Toronto.

Mr. Philip: How about Friday?

Mr. Chairman: How do members feel about this Friday?

Mr. Boudria: No.

Mr. Philip: What about Friday of this week?

Mr. Mitchell: Unfortunately I know that, speaking for myself, based on the agenda that was given us, I made other arrangements for the Friday. I have made plans for a number of other meetings. I grant you they are not impossible to break, but you know yourselves that it does not look very well when one starts jumping around when commitments have been made. Wednesday seems to be the consensus for next week, Mr. Chairman.

Mr. Chairman: It seems to be that it fits into the schedules of the vast majority of members, and that seems to be the most convenient date, so I think that is the one we shall proceed with.

The next matter that we want to deal with is--

10:20 a.m.

Mr. Cooke: Is there not any way we can postpone it since



the reason the committee is not meeting with the Ombudsman this week is because he happens to be out of the country? This has dragged on now since December or whenever it was first brought to our attention and this can actually wait until the following week or whenever it can be scheduled. I did write you and I have indicated a fair interest in this particular issue and I would really like to be there.

It just so happens that I scheduled five days for this week when the committee was scheduled to meet and I really think it is rather important since I think we are talking about the credibility of the office of the Ombudsman. I would really like to be here. I don't think it is crucial that it has to be done next week. It is a matter that, as I say, has been around now for a couple of months already.

Mr. Chairman: The committee has heard Mr. Cooke's concerns. I am quite flexible on it. I will leave it up to the committee as to what is most--

Mr. Piché: I'm flexible if you want to push it to next week.

Mr. Treleaven: I will not be in southern Ontario the following week.

Mr. Mitchell: We mustn't lose sight of the fact, Mr. Chairman, that in the first week in March we have the justice committee sitting and that is not too distant. That's really about the time that is being talked about and they are dealing with the Children's Law Reform Act. That's going to be March 3, 4 and possibly 5. The following week we are into the opening of the Legislature on March 9. Some of us, because we have been on various committees and so on, are trying to get at least a short period of time away. I have every respect--

Mr. Cooke: That's why I'm doing that.

Mr. Mitchell: I have every respect for what you are saying but I think if you look at the members here and what is being said, we appear to have about nine of us who can make it next week but find it impossible for the balance of the time whereas--

Mr. Cooke: What about the week of the twenty-second?

Mr. Mitchell: You have heard--

Mr. Cooke: That's the week you are--

Mr. Mitchell: Mr. Piché and Mr. Treleaven will definitely be away.

Mr. Piché: No, I am available both weeks in fact. It doesn't matter--

Mr. Mitchell: I am sorry. I thought you said you were not--

Mr. Piché: No, no. I am flexible.

Mr. Cooke: So for the week of March 22 we are in the same position as next week where one member of the committee is not available. It just so happens that next week is the week that I am away. The week after is the week that Mr. Treleaven is away.

Mr. Philip: Another alternative would be for all of us to come in a day early since the Legislature starts on March 9. We could come in on March 8, which is the Monday, and that would save us some travel time.

Mr. Mitchell: That again creates some problems. Mr. Philip, you are fortunate you live in this particular area but if you were like some of the rest of us from outlying areas who wish to bring our wives or perhaps a couple of our children to the opening, that means we really have to hold that Monday open to bring our families down.

Mr. Cooke: Let me ask Mr. Treleaven if he feels as strongly about this as I do. I think--

Mr. Treleaven: I couldn't possibly know what's in your mind, only my own, but I would say I haven't been on this committee before. I don't think we want to weigh the relative merits of your wishes against mine. It's simply a case of letting them go whichever way. One of us will not be here whichever week is chosen. It is as simple as that.

Mr. Chairman: I am going to throw it back to the committee. I think the only way we are going to resolve this is to have a motion to meet on a certain date. In that way we will vote it and set it aside and we will go on to more important things. Can we have a motion?

Mr. Cooke: Could I suggest the twenty-second by way of a motion?

Mr. Chairman: I can tell you one thing. The twenty-second is out for me.

Mr. Cooke: Well, any day that week.

Mr. Chairman: Okay, we have a motion.

Mr. Cooke: Any day that week is what I am suggesting.

Mr. Van Horne: You said the week of the twenty-second?

Mr. Chairman: We have a motion that the meeting be held on the week of the twenty-second. All in favour?

Motion negatived.

Mr. Chairman: Do we have another motion?

Mr. Van Horne: I would move that week of the fifteenth.



Mr. Chairman: Any comments on the motion?

All those in favour? Opposed?

Motion agreed to.

Interjection.

Mr. Chairman: We agreed on the seventeenth earlier. There seemed to be a majority opinion on the seventeenth. I guess all we can say to Mr. Cooke--I know it is difficult because the Ombudsman is going to be here and he will not have the opportunity to question him--but perhaps you could--

Mr. Cooke: I also think if the committee scheduled itself for five days this particular week, I do not know why it was changed so that we were not going to meet this Friday, if things could be arranged--why that was not done, why we cancelled Monday and Friday of this week.

Mr. Boudria: If I can speak to that, the agenda for this meeting was circulated about three months ago saying exactly what days we were going to sit.

Mr. Cooke: I am talking about negotiations that went on between the House leaders in consultation with the committee and the clerk. There were two days added on the schedule that we, as whips, were given, and then it was changed.

Mr. Chairman: Gentlemen, the matter has been resolved by motion. I think we appreciate Mr. Cooke's position. All we can suggest at this point is that he submit his concerns in writing. I know that is not going to be adequate for the way he feels, but I see no other options.

Mr. Philip: Mr. Chairman, since you mentioned earlier that you received a great amount of correspondence on this matter, I think it would be helpful for the committee if each of us were to receive a copy of that correspondence before we have an opportunity to question.

Mr. Chairman: I thought I had indicated earlier that you will be receiving copies of all correspondence.

Mr. Philip: Maybe you did. I apologize if I missed that.

Mr. Chairman: I think the counsel has a comment.

Mr. Goodman: Mr. Chairman, further to Mr. Philip's remarks, I am wondering whether it would be possible for you, sir, to distribute copies of Mr. Morand's letter to you of January 8 wherein he outlines the background to the invitation and his reasons for accepting, and to indicate that Mr. Morand very much looks forward to addressing the committee, amplifying the contents of his letter and to answering any questions the committee may have.

Mr. Chairman: Perhaps, Mr. Goodman, since you have spoken up--I do not know if all members of the committee are aware just who you are--you could introduce yourself and indicate why you are here today.

Mr. Goodman: I believe I have had an opportunity to meet all the members of the committee. I am Brian Goodman, and I am counsel and special adviser to the Ombudsman. Mark Nantais, who is sitting back there, is the executive assistant to Mr. Morand. I am pleased to be here this morning to assist you.

Mr. Bell: Mr. Chairman, members of the committee, if you will permit me I would like to make some suggestions in respect of how you proceed that day and what you have before you as you proceed. I will do it with the benefit of some observations from my perspective. It seems to me that what is required from the Ombudsman, initially, is a definition and a thorough description of what this matter is all about--from whom was the invitation issued, under what auspices, what is the nature of the meeting or meetings there, its specific purpose and any aspirations Mr. Morand may have in respect of his participation therein.

That in itself is absolutely necessary if you take the ruling of the Deputy Speaker literally. I have reference to a letter which all of you received recently, I understand, from Mr. Johnston. It is required so that you can at least assess that which Mr. Morand tells you and the concerns that may be expressed to you by your colleagues, and certainly the concerns that are expressed to you in respect of the letters that you will receive. That is fundamental.

I have had some prior conversation with Mr. Goodman and I told him that. He and Mr. Morand will certainly be ready with that information. It may be already contained in the letter from Mr. Morand to the chairman, which you are going to receive shortly--I believe it was sent last month--which explains in some detail what the matter is all about. Secondly, you must have before you and will have, as soon as Mr. White can so arrange it, copies of all communications that the committee has received through the chairman, either sent directly to the committee, or sent to others and copied to the committee.

10:30 a.m.

You must know the background of the concerns, and Mr. Morand must be aware of the backgrounds of the concerns and, in my view, must come before you prepared to address those concerns, or the issues raised by the letters. I have had discussions with Mr. Goodman. He concurs in that view and will so advise the Ombudsman.

Lastly, flowing from the Deputy Speaker's ruling, this committee must give notice to your colleagues of the date of the meeting and the intended purpose, giving your colleagues an opportunity, if they so choose, to address you, either in written form or personally, of any concerns or comments they might have respecting the issue. If the committee concurs in that view, that communication should be sent immediately to your colleagues, thereby giving them nine days to so advise you.



When you have the benefit of those three areas--Mr. Morand, the communication and any comments or concerns your colleagues may have--then you can consider the substance of the matter that has been placed before you, and that is, to paraphrase the wording of Mr. Johnston in Hansard, December 16, 1981, whether or not that visit, for all of its reasons then known to you, is inappropriate for the Ombudsman of this province.

I stop short of giving you at this time any advice as to what you should do with that, but that is the issue, as I see it, that you have to consider. To give the issue its due attention you have to consider it against the background of the three areas I have just reviewed. I have used the word "must." I do not mean to do that in a binding way; I make that as a suggestion. If you concur, the record of what I have just said can be used as a blueprint on how we proceed that day, and will assist Mr. Morand and anybody else to prepare for that event.

Mr. Cooke: There are two other areas that I hope the committee will look at and that I think are as important. One is whether there are any other members of Mr. Morand's staff that are included in this trip to South Africa. Secondly, a particular statement that was made by the Ombudsman was, I hope, incorrectly reported on the radio where he indicated that if the Premier (Mr. Davis) asked him not to go to South Africa, he would agree not to go. Obviously that has some significant ramifications for the reporting mechanism and the independence of the Ombudsman if that statement were true.

Mr. Goodman: I would like to address the first question right now so there will be no doubt. In the letter to the chairman, Mr. Morand enclosed a copy of the program which indicates who the seminar speakers are, and included among those seminar speakers is myself in my capacity as vice-chairman of the Ombudsman Forum of the International Bar Association.

In so far as the second concern which you addressed is concerned, I am sure Mr. Morand would prefer to answer that before the committee. I can tell you that what he said was misreported by the press. He will be pleased to correct that. While we are on that, I know there are a lot of matters the committee would like to raise with the Ombudsman. Likewise, Mr. Morand has asked me to indicate that he would very much like to address the serious inaccuracies which were contained in the media reports, both concerning him, his office and this committee. I would ask you to set time aside for that.

Mr. Treleaven: We have heard the Deputy Speaker's ruling referred to. Has it been established whether that ruling was correct, through precedents or otherwise? Is it not unwise to carry on discussing a reference to this committee from a ruling which we do not know is correct or not?

Mr. Chairman: It wasn't challenged, and I guess there is some flexibility in terms of interpretation of our terms of reference. It was felt by the chairman that if the committee is in disagreement, I guess this is the time to say so. It was

appropriate for this committee to be used as a vehicle for members of the assembly to express their views on this. There really is perhaps no other opportunity for them to do so. It was felt this would be the proper way to proceed, and we are carrying on under that assumption. It will be pointed out in a letter from the Ombudsman--and that will be circulated to you--that he feels and his office feels that perhaps this is an area we should not be getting into.

Mr. Goodman: Mr. Chairman, I want to make it clear we have been happy to appear before the committee to explain the background to the invitation and the reasons for accepting it, and to abide by the Deputy Speaker's ruling to have the individual members make their concerns known, as suggested by Mr. Johnston, through the vehicle of the committee. The issue he is concerned about is whether this committee has the authority to tell the Ombudsman where he should go or should not go. He has no problem with the first.

Mr. Cooke: There is no question about that. We don't have that authority.

Mr. Goodman: I wanted to make it clear that Mr. Morand has no concerns and is quite happy to appear before the committee where all issues can be addressed, so that there can be a full and fair discussion and debate on all the issues, the pros and cons, so that this committee and the assembly and the members thereof can make their views known, and he can receive those views. There is no problem with that.

Mr. Chairman: Mr. Goodman, I think it is the intention of the committee to follow that procedure you have just outlined, but following completion of that it will be a decision of this committee whether or not they want to express an opinion on the appropriateness of the trip. I think that was indicated, really, in the question asked in the House on December 16.

Mr. Philip: With respect, Mr. Chairman, we could go further than that and say that while this committee may not have the authority directly to tell the Ombudsman that he may not go, the Legislative Assembly does, and after hearing the testimony this committee could if it wishes, and it may decide not to, but if it does feel anxious about that, it could pass a motion that would ask the Legislative Assembly, and you, Mr. Chairman, would report back that motion to the House, to instruct Mr. Morand not to go. The Legislative Assembly has that power to do that.

Mr. Goodman: Mr. Philip, if I could address that for a moment, there is no question that the Legislative Assembly has such authority. But I disagree with you that just because the assembly has that authority, that this committee necessarily has the authority to pass a motion, given its terms of reference, and make a recommendation to the assembly. No one disputes the power of the assembly to deal with the matter.

Interjections.

Mr. Chairman: I wonder if we are going to get anywhere



getting into this argument today. I would suggest that we leave the matter as it is now. We are going to discuss it thoroughly and following our discussions with the Ombudsman, as a committee we can decide what is the appropriate course to follow. I think we should be moving on.

Mr. Goodman: Really, the matter is academic. Mr. Morand is quite happy to appear before you and give his reasons and hear your views. He is a servant of the Legislature.

Mr. Cooke: Mr. Chairman, I have to go back to another meeting. I have to leave but I wouldn't want to give anyone the impression that I am leaving because you have scheduled a meeting when I can't be here. However, I do want to make one point. I hope the committee will deal next week not only with Mr. Morand's trip. As Mr. Goodman has pointed out, he is attending also. We are talking about the Office of the Ombudsman, and I think the trips of both individuals could have implications for the credibility of the Ombudsman's office. I hope the committee will take a look at that as well. I will attempt to put some of my thoughts in writing and either present them to each individual committee member or through Ed Philip at next week's committee.

Mr. G. I. Miller: Mr. Chairman, when will the Ombudsman be available to the committee? Will he be available next week?

Mr. Chairman: It is possible, because he has returned. The problem is getting the material circulated to all the members.

Mr. G. I. Miller: It might be possible to accommodate Mr. Cooke if we could have him in on--

Mr. Chairman: The committee has reached a decision on that. I don't really want to start over on that argument again.

10:40 a.m.

Mr. Shymko: Mr. Chairman, I just wanted to say that in addition to the concerns we have relating to the Ombudsman's decision to go to South Africa, his appearance here and other matters on the agenda, there is an issue at the federal level which is of great concern to all Canadians and which is related to domestic human rights. I would like to mention what the issue is and perhaps put that particular material and copies of the order in council from the Canada Gazette into our documentation and on the order of topics for discussion.

I refer to the order respecting emergency planning, which is an order in council that was passed on May 21, 1981, without any debate in Parliament, empowering the government of Canada to establish and administer civilian internment camps. In the discussions we had earlier as to the concerns the committee may have in expanding its mandate on civil rights and human rights the domestic concerns would be crucial. I think that in light of the patriation of the constitution and the human rights charter it has a great impact on and certainly great implications for human rights and civil liberties when we start establishing internment camps in Canada.

It is an issue that is of great concern to the members of Parliament federally. I just wondered if we could perhaps somehow have this as one of the topics on the agenda or if I could at least distribute or table with you the debate in the House of Commons and also a copy of that particular order in council.

Mr. Chairman: Thank you. I think we can be flexible enough, unless there is opposition from members, to include that in our discussion on the House resolution on political rights, and we can incorporate that--

Mr. Philip: I think it's a logical extension of the discussions we are going to have. I think Mr. Shymko brings a very legitimate concern. It's great to be very concerned about what is going on in countries such as Poland, and I share that concern, but I think we always have to be vigilant that we don't end up with those kinds of regimes in our own backyards. Some pretty atrocious abuses of civil liberties have taken place in this country.

Mr. Mitchell: I was just going to say, Mr. Chairman, that I personally would support the point Mr. Shymko is making. I have not seen the background material. I think we need to see that and I think this is a good forum in which to see it because right at the moment a number of us are operating on perceptions, and those perceptions may be quite wrong. I think it is a very worthwhile exercise, so I would support the proposition Mr. Shymko is making that this material be part of our discussions.

Mr. Chairman: Thank you. One further thing, Mr. Goodman, while you are here. I believe the Ombudsman did indicate to us at some point that when he appears before us he wants to discuss the possibility of opening an eastern Ontario office. I don't know if that is still--

Mr. Goodman: I understood that rather than the Ombudsman wanting to discuss it, it was this committee's wish to discuss a regional office with him. I may be--

Mr. Chairman: That wasn't my understanding.

Mr. Goodman: He is certainly quite prepared to discuss the office, whether it be his wish or your wish.

Mr. Chairman: I thought he had a recommendation or a plan of action in terms of an eastern Ontario office, and he was really just going to be bringing us up to date.

Mr. Goodman: My recollection is that he did indicate before the Board of Internal Economy, where you sat, Mr. Chairman, ex officio, if I can put it that way, that he was considering an office in eastern Ontario, and in the event that committee members wished to have some more information as to why he chose that location, et cetera, he is only too pleased to provide it.

Mr. Chairman: Yes. I think we would appreciate having that information.



Mr. Philip: One last question, Mr. Chairman, on this matter of the Ombudsman appearing on Wednesday, February 17, or inviting him to do so. I take it that you say you have had a considerable amount of correspondence on this. In any of that correspondence have any of those groups requested an appearance before this committee?

Mr. Chairman: I don't believe so. No.

Mr. Philip: So the Canadian Civil Liberties Association or no very well known--

Mr. Chairman: No. We will have to review it, but I am quite certain that there has not been any request. In fact, a lot of the correspondence was directed to the Premier's office and we were sent a copy of it, but in the material directed to me as chairman of the committee I don't believe there was any request to appear before the committee.

Mr. Philip: It might be worth my while to obtain the opinions of a group such as the Canadian Civil Liberties Association on a matter like this. They may wish to appear or they may decide that they do not wish to appear, but I always find that when they do appear it helps me to clarify some of the points in my mind.

Mr. Chairman: I think we have a pretty generous sampling of views in the correspondence we have received. We are, of course, encouraging input from the members of the assembly. In fact, if you look at the Deputy Speaker's ruling on that date--appropriate action through the committee so that all members might reflect their concerns directly to him--I must say that I am reluctant to open it up to hearing delegations from the public. I think it would develop into something of a side-show--that's my own opinion--and it could carry on indefinitely. I would prefer to leave it to this committee and encourage members of the assembly to appear before us.

Mr. Bell: Mr. Philip, if it will assist you, I have had the benefit of reading, I believe, all of the letters, certainly a substantial majority. It is my view that the issues which are raised in those letters are the most significant issues that ought to be addressed. Mr. Morand has, or certainly will have, copies of those letters beforehand, and, as I already indicated, he will come prepared to address the issues raised by the letters.

Without getting into detail I see that there are two significant issues aside from the ones raised by Mr. Cooke this morning. I do not see the utility, frankly, of asking or inviting other groups to attend who have not volunteered information to date. I think you have got enough before you to address the matter with the Ombudsman and his staff very thoroughly.

Mr. Treleaven: Mr. Chairman, if you will excuse me I will get used to it.

Mr. Piché: We hope you do.

Mr. Treleaven: We don't have any agenda, and I understand that you have speakers lined up for various half days and you have open half days.

Mr. Chairman: Yes.

Mr. Treleaven: Could we possibly have that circulated so we know we are not in a vacuum here?

Interjection.

Mr. Chairman: Okay. Fine.

Mr. Goodman: Mr. Chairman, before you move on, I take it that I will then receive copies of all correspondence that I have not yet received from members of the public to the committee. You have referred to a considerable number of letters; I have only received four or five from the committee. I have them here.

Mr. Chairman: That's the understanding. We will give you everything we have.

Mr. Bell: Yes. You will get everything.

Mr. Treleaven and other members of the committee, other than the index that is found at the opening of the brief that I had distributed to you, you do not have an agenda of what you are going to do this week. The substantial reason for that is that the lineup of speakers is yet to be finalized. There has been a lot of juggling. I think you can appreciate the time that was involved in setting and the number of people and the locations they come from.

Let me take you through the brief. It is, I hope, a distillation--believe me, it's a distillation--of information that you require to give full consideration to the issue of the resolution. The material under tab number one is obviously the resolution itself in the debate. You will see from that material that it was an all-party debate, and while there was one dissenting view expressed it is a report of a resolution passed unanimously. In any event, it received substantial support from all parties.

The matters that are touched on by the various speakers are in my view very important and should be a starting point for you in gaining a full understanding, or at least catching up to members of the committee who have been privy to this resolution from the beginning. I commend that material to you if you have not already read it.

10:50 a.m.

For the purposes of this afternoon, you are going to meet the first guest this afternoon at two o'clock, Senator Joan Neiman, who is a member of the Inter-Parliamentary Union. I believe her official capacity is vice-chairman of the Canadian group, but she is one within the group who is most intimately involved in behalf of Canada in respect of the type of matters raised by the



resolution. When she appears before you this afternoon she will address the resolution from the perspective of the group she represents, will give you a (inaudible) overview of the operation of that group and, I hope, have some suggestions for you to consider on how you may give effect to the resolution or at least report back to the House how you may give effect to the resolution.

If you have an opportunity over the lunch break I commend to you the material in tab number two. It is an excellent summary, done by Graham White, of the information and matters addressed to the committee up to this time. Graham has made a very accurate and representative selection of the actual testimony of the persons who appeared before the committee. It is very easy reading. It contains all the suggestions that have been made to date on how the resolution may be implemented by the House.

You will see some common themes flowing through the material. For example, if the matters at hand are to be regularly and continuously referred to in the Legislature or regularly and continuously acted on by the Legislature, you need a vehicle for bringing it to the Legislature for attention. The obvious reason is that your work load is large enough; if you leave it to individual members or circumstances to bring something before the assembly it's going to get caught in the pecking order.

So if there is a question of policy that these matters should be regularly addressed, you have to find a vehicle. The majority of persons have suggested that you strike a committee of the House and give it the function of regularly monitoring international affairs and maintaining liaison with the so-called recognized international groups referred to in the resolution directly and indirectly, and that you give that committee the authority to bring matters to the attention of the House with recommendation for resolution or whatever. That is something that you may want to consider, address and discuss with Senator Neiman this afternoon.

Mr. Piché: Item two is the same information that was circulated earlier.

Mr. Bell: That's it. I've just--

Mr. Piché: So those who did their homework don't have to read it in the noon recess.

Mr. Bell: That's right.

The most common theme you will see flowing through--there are two others, actually--is that with one exception, that being Amnesty International, the groups are prepared to accept support in kind or in money from the assembly. It can manifest itself in a whole variety of ways, but the concept of actual support by the assembly for these groups is another theme you may wish to address and raise with Senator Neiman.

The other issue it raises is that something must be done within Ontario in terms of education, both in the formal sense such as curricula at the elementary, secondary and post-secondary

level, or in other more informal ways of education, in respect of human rights matters, the consensus being that we are lacking in that area and if the assembly wishes to make its voice heard, that is a very effective way of doing it. Again, you may wish to discuss that with her. That is just a synopsis of what is contained in the material.

The remaining provisions, down to and including number six, contain a selection of material that has been tabled with the committee by the various groups. On the United Nations Commission on Human Rights, and I should also say committee on human rights, you will see various protocol documents and articles of the commission striking the committee which set out its terms of reference.

Tab number four contains the brief submitted to the committee by the International Commission of Jurists. It is an excellent document. It is an excellent distillation of what this commission does, and it also contains some excellent suggestions on what the assembly might do.

Tab number five is a brief submitted from Amnesty International, and I commend that to you at your convenience.

Tab number six is material received from the International Committee of the Red Cross. The Red Cross did not appear before you. They chose not to accept an invitation or request but filed certain material, and this is the most useful.

From seven down to 11, I have referenced for your convenience and information items and material that relate to persons who will appear before you this week.

What the committee had not done up to now is ask the person who moved the resolution, the member for Riverdale (Mr. Renwick), to appear before it to expand, where necessary, on the resolution and to offer any more concrete suggestions. An invitation has been extended and he will appear tomorrow afternoon to address you, so you can put that in your schedule.

Also tomorrow afternoon the former chairman of this committee, Pat Lawlor, will attend to give you the benefit of his experience as chairman last time, and Mr. Lawlor has some views of his own which he indicated he would like to share with the committee for its consideration. That takes up tomorrow afternoon.

Item number nine, the background of Dr. John Foster's attendance, is as follows: The committee initially conveyed an invitation to the Council of Churches of Canada to attend before it and share its views and make any suggestions. That initially was not readily accepted by the council of churches for a number of reasons which are not relevant. To make a long story short, the council referred the matter to the Interchurch Committee on Human Rights in Latin America, and specifically Dr. Foster. We are told this is the group within the council, or at least associated with the council, that is most directly involved in the matters raised by the resolution.



He will attend before you. At present that is scheduled for Thursday, February 11, in the afternoon. There is a possibility that will be changed to Thursday morning. If that is done, you will have Thursday afternoon to deliberate among yourselves as to what matters you have heard this week, and whatever else may be relevant to formulate the basis for a report. As of now, he is on on February 11 in the afternoon. Mr. White reminds me that, along with Dr. Foster on Thursday afternoon, a representative will attend from the Taskforce on the Churches and Corporate Responsibility.

11 a.m.

Mr. Philip: Who is that?

Clerk of the Committee: There is a woman named Renata Pratt, who is the co-ordinator of the task force.

Mr. Bell: Again, we are advised that this group, which represents substantially all of the Christian denominations in Canada, is the most directly involved with matters raised by the resolution.

Item number 10--and I hope he will forgive me--there is an informal or an ad hoc group based in Ottawa called the Parliamentary Helsinki Group and they were struck largely as a result of the Helsinki treaty and conventions. They have parallel functions and interests to the Inter-Parliamentary Union, although it is not a duplication by any means.

In any event, its present chairman, Jesse Flis, has agreed to attend and he will be here tomorrow morning to address you. In tab number 10 you will see there is some background reading on the Canadian Parliamentary Helsinki Group which will give you a basis for understanding what it is, so that you may formulate any questions that you consider necessary.

Finally, Senator Joan Neiman will attend before you this afternoon, and I have already described to you what her general function is and what the Inter-Parliamentary Union is all about. It is safe to say that is the group which probably has the closest ties to yourselves. They deal with concerns of your colleagues internationally, members of parliaments or legislatures or the ruling groups in various countries who are victims of political imprisonment and/or torture and other matters involving human rights.

That is your lineup for this week and, together with the individuals and matters the committee before you had addressed, it gives you about as exhaustive an overview as possible short of travelling to the UN and other areas, and in my view gives you a substantial body of information from which to formulate your report and any appropriate recommendations.

Mr. Treleaven: Mr. Chairman, did you say that Dr. Foster and Renata Pratt were on Thursday morning? I took it that you said Thursday afternoon latterly.

Mr. Bell: At present, Mr. Treleaven, it is Thursday afternoon. We are trying to reschedule them for Thursday morning in the hope that if you get all of your business out of the way by Thursday noon, you will have Thursday afternoon to deliberate.

Mr. Treleaven: Is Renata Pratt a witness with Dr. Foster; the same presentation or a separate presentation?

Mr. Bell: It will be a separate presentation. They complement one another and it is appropriate to put them on together.

Mr. Treleaven: When is it contemplated, Mr. Chairman, that we deal with the subject that Mr. Shymko brought up?

Mr. Chairman: The same time really. Perhaps we can get into more detail on it Thursday afternoon if that is appropriate.

Mr. Shymko: If we have officially agreed to include that particular submission on the index, it perhaps would be relevant that we make reference to what has been raised in the House of Commons when we address the chairman of the parliamentary Helsinki group, although I see he may simply raise the issue that he is dealing only with the Helsinki accords, as such, which deal with the agreement. I just wonder to what degree he would be ready to address that particular issue as the concern of the parliamentary group. We may address it certainly to Senator Joan Neiman.

If I may suggest, we could invite the MPs or somebody who spoke on the issue in the House of Commons to appear before this committee. It would make more sense than simply making reference to it and addressing other individuals who never expressed their concern on it. My suggestion would be that either Mr. Benno Friesen or some of the other members of the federal Parliament who address the issue could perhaps be invited to appear before this committee.

Mr. Philip: I have the uneasy feeling that, if we are not careful, the serious problem that Mr. Shymko brought to our attention, and that I feel strongly we should deal with, may get short shrift. I think mixing the two in this kind of hotchpotch way on a Thursday afternoon is going to do justice to neither. I would rather see us take some adequate time by dealing with it perhaps in a brief manner on, say, Thursday, but with the understanding of this committee that we will set aside some additional time, after we have had an opportunity to digest some of the material that is distributed, and then decide which witnesses, if any, we wish to call before us. I don't see us dealing with both items in three days.

Out of respect for what Mr. Shymko said and out of my concern about the importance of it, I have the anxious feeling that it should not be just a kind of tack-on. It may distract us from the very serious problem we have before us. We will not have time to prepare for it properly, and I would like to see the committee perhaps, if this is our intention, devote some extra time to what Mr. Shymko has suggested and not water down what we are doing on this.



Mr. Shymko: May I add that I certainly concur with Mr. Philip's remarks. I think the issue is separate and it should not really be mixed with the other areas of concerns. As soon as we get copies of the Canada Gazette from the clerk of this committee, perhaps we could spend a day or two looking over that particular order in council and spend a separate afternoon when the committee may decide who to call as witnesses before this committee. But I stress this issue to the members of this committee, as I feel personally very strongly about raising it. It is a concern I think should have great priority to this committee.

Mr. Chairman: Senator Neiman has to leave by, at the latest, four o'clock this afternoon, so that is going to give us some time. I don't know if we can get your material distributed, but perhaps we can do that this afternoon after four o'clock and get into some discussion as to how we are going to approach this matter. We will leave it till four o'clock, if that is agreed.

Mr. Boudria: Mr. Chairman, how would that leave us time to look the material over? Could we not schedule, say, tomorrow afternoon instead, after we finish with the delegations? That would give us some time tonight to look over Mr. Shymko's material.

Mr. Chairman: We know we are going to have time today because Senator Neiman has to leave at four o'clock. I am not suggesting we have to get into great detail on that, but we can talk about just where we are going to slot this in and how we are going to approach the question. That will give us about an hour to deal with it. We should be able to reach some resolution this afternoon.

Mr. Shymko: Do I understand, Mr. Chairman, that you will be meeting next week on the seventeenth?

Mr. Chairman: Yes.

Mr. Shymko: I guess maybe you have given some thought as to whether we should spend time the following week, February 17, deliberating on this issue.

Mr. Chairman: The seventeenth is set aside to deal with the Ombudsman's trip.

Mr. Shymko: Oh, I see; I was not here, I am sorry.

11:10 a.m.

Mr. Chairman: We do not know how long it is going to take. There may be sufficient time, or we may agree to set--

Mr. G. I. Miller: All day?

Mr. Chairman: We do not know how long it is going to take. There may be sufficient time or we may agree this afternoon to set aside a day to deal with what you have brought forward.

Mr. Shymko: The committee, I am sure, had voted on

selecting that particular date. You may not be aware that I am the chairman of the social development committee, and on February 17 we are meeting. I could be substituted by someone else, but, unless there are serious obstacles, maybe February 16 or February 15 would be a preferable date. But we are not going to go into that.

Interjection.

Mr. Chairman: It pays to get here on time. There are a couple of other matters we should clean up before lunch break. We will get into that this afternoon. We have some correspondence from the public, a couple of letters our counsel wants to deal with.

Mr. Bell: Members of the committee, particularly the newer members, we have a policy when communications from the public are received. By the way, those communications take many forms. It is too bad Mr. Goodman is not here. I am not saying anything behind anybody's back, but it is a fact that the majority of the communications the committee receives express comment and/or concern as to one or more aspects of the organization and the operation of the Ombudsman's office. The majority are complainants who, for whatever reason, are not satisfied with either the result achieved or the process leading to the result.

Since the committee last met in December, there have been three new communications received. What has been done in the past when they have been received is that at an appropriate time copies are distributed to each of you, so that you know what they are all about, and then some time thereafter, as a committee, you decide whether the matters raised in those communications are such that a further consideration of them would assist you in carrying out your terms of reference, that is, to report to the Legislature respecting your consideration of any Ombudsman report, or to report to the Legislature on whether and to what extent general rules are appropriate to guide him in the exercise of his functions.

The committee has only on two prior occasions decided to hear from members of the public directly. The committee has only on two prior occasions pursued the matter in any real detail with the Ombudsman. They had to do with matters now contained in general rules, one having to do with confidentiality. So what I propose, subject to your direction, is to have copies of these communications made and distributed to each of you this week, to be retained by you and the committee, confidentially, until you make a decision if you are going to pursue it in more detail.

Mr. Piché: Or unless it is brought up at one of these meetings.

Mr. Bell: By distributing copies to you, it is intended that it will be brought up again--

Mr. Piché: Then it becomes public knowledge.

Mr. Bell: --for formal discussion to make one of two



decisions. One is, no, it will not assist you in carrying out your terms of reference, and therefore, you acknowledge the correspondence with an appropriate comment. Two is, yes, it will assist you in formulating or carrying out your terms of reference and you are going to pursue it further in whatever way you decide. In each of these circumstances, the Ombudsman is given copies of the same correspondence, and he has the appropriate representative of his office attend so that any information you may require in coming to your decision can be offered.

Without in any way prejudging, or attempting to assist you in a prejudgement, of the three communications, one will require more information or assistance from the Ombudsman's office than the other two, mainly because it deals with an actual investigation and an actual result. Of the other two, one is more administrative in nature, in my view, and the other is more an expression of a point of view respecting the process generally than it is something specific. If everybody concurs that this procedure be continued, then we will do what we did last time for those continuing members and for the assistance of the new members.

Mr. Philip: Is there a time set out on our schedule now?

Mr. Bell: There isn't, Mr. Philip. I had hoped that with some time remaining this week those matters could be addressed for no other reason than to respond relatively quickly to these people after it had come to your attention in a formal sense. If it can't be done this week, then I recommend that it be addressed at the earliest opportunity, which would be some time next week.

Mr. Philip: Do I take it the nature of one of the pieces of correspondence is such that it would take some time to deal with and the other two could be dealt with fairly expeditiously?

Mr. Bell: I think it will require--

Mr. Philip: Half a day?

Mr. Bell: No. It will require some explanation from the Ombudsman's office, for one reason because it is not readily apparent from the communication what has been done to date. It's a classic case where the Ombudsman has issued a report to the particular complainant and the complainant does not accept the report for a number of reasons. What is not apparent and what the Ombudsman's office should share with you is whether and to what extent there has been a follow-up with that complainant. That will require some time. I don't foresee you would require anything near that to come to the initial decision you must make, but I would say overall a half an hour for the three of them would probably suffice, no more.

Mr. Chairman: It is becoming apparent we are probably going to require another day somewhere along the line to deal with what Yuri has brought forward. We also have the question of travel we want to discuss some time this year. Mr. Miller brought up at our last sitting about going to visit the northern Ontario office. We didn't reach a decision on that, and there was a possibility of overseas travel at some point later on in the year. We have to

reach a decision on that too. Perhaps this afternoon we can look at setting another day aside to deal with all these matters.

Mr. Mitchell: Mr. Chairman, regarding the background on the letters being mentioned here or the communiqués that have been received and the fact that one of them deals with a decision that has been made that someone is unhappy with, are they of great urgency or something that can be dealt with later? I presume this committee is going to be reconstituted once the Legislature comes back in, is it not?

Mr. Chairman: According to the clerk it stays in existence for the life of this parliament.

Mr. Philip: It only sits when the House is not in session.

Mr. Chairman: That is correct, yes.

Mr. Mitchell: Is there any reason why it cannot sit when the House is in session as other committees do?

Mr. Chairman: We have to ask the House for authorization.

Mr. Mitchell: I guess that comes down to the question I am asking. I realize there are a number of other committees that do sit, but, as a new member sitting on this committee, it strikes me there is a great deal of individual research that each one of us, that is, the new members here, are going to have to do. I think Mr. Philip has made a good point with respect to the concerns Mr. Shymko has, that we don't want to pay short shrift to them. So I am somewhat concerned when we see we have three days this week. Knowing we have all established our own schedules based on this week's sittings, it strikes me as being a difficult situation for us to begin allocating any additional time within the next two to three weeks.

I guess what I am coming down to is that as long as this committee is in force and if it was the committee's wish that we obtain the approval of the House to sit while the House is in session, perhaps that is the direction we should be following.

11:20 a.m.

I don't know what sort of conflicts that would create with other committees but I just see that what started off originally as perhaps a small package is gradually reaching this point where members raise concerns that they have and, in all honesty, with Yuri's background on the council that he was on in Toronto and so on, I deserve as a committee member the benefit of his knowledge. I do not see us being able to get that within the present system we are operating under. I am somewhat concerned.

If I may be so bold--and I have not talked to my colleagues here--perhaps you as chairman should be seeking permission for us to continue so that we can deal with all of these things.

Mr. Philip: The House leaders won't be happy with that.



Mr. Treleaven: Just following up on Mr. Mitchell's comments, when we refer to our terms of reference, really we have two very important matters in front of us: the one that is scheduled and the one Mr. Shymko has brought up; each of which falls within the terms of reference. Perhaps these letters do not.

So if there is a priority to be given here, I would like to take the one that is most relevant and that is Mr. Shymko's topic; it perhaps can await two or three months less than some letters that are with us. I would like to urge the committee to set Mr. Shymko's matter up with all due dispatch and priority, maybe even in priority to some of the witnesses in front of us. I would like the committee to consider that.

Mr. Chairman: I indicated earlier that we are going to have at least an hour later on this afternoon. Senator Neiman can stay no longer than four. She may be leaving earlier than that and the afternoon will be open from that point on and we can discuss these matters at that time.

Mr. Treleaven: Do we not sit only until 4:30? Is that not the usual time?

Mr. Chairman: We have been sitting, I think, until five o'clock. Yes, we went quite late on a number of occasions. Can we leave that until this afternoon and get into an in-depth discussion on it?

Mr. Boudria: Why would it not be correct for us to schedule tentatively Wednesday and Thursday of next week, if needed, and that way each one of us maybe could make it a point not to organize our schedules to have something else next Thursday? If we finished next Wednesday, then so be it, we will have a day off. But we could, at this particular point, reserve Thursday of next week and that will give us two days, if necessary.

Mr. Philip: I do not want to inflict my problems on the committee but unfortunately I am scheduled for some very minor surgery next Thursday. It would mean there would be nobody from our party here after one o'clock. It is just a small oral surgery but I have cancelled it once because of the schedule of this committee. It takes three months to get an appointment with this guy. I don't mind appearing with a fat jaw but since my colleague Dave Cooke is going to be out of town--

Mr. Chairman: What about Thursday morning?

Mr. Philip: I would suggest Tuesday or Thursday.

Mr. Chairman: I was going to say Thursday morning, if we went until one o'clock, perhaps we could wrap everything up.

Mr. Philip: What about Tuesday, is that not acceptable?

Mr. Mitchell: I have a meeting all Tuesday morning.

Mr. Chairman: I am in Kingston all day Tuesday.

Mr. Philip: What about this Friday then?

Mr. Chairman: We have already ruled that one out. There are too many conflicts.

Mr. Philip: If we did it Friday morning, that allows those members from out of town to at least have Friday afternoon--

Mr. Chairman: I think we had at least three or four people indicate they could not be here on Friday.

Mr. Mitchell: Based on the schedule that was established, I have logged in other meetings, speaking for myself.

Mr. Boudria: Same here.

Mr. MacQuarrie: Friday, generally, is difficult for out of town members who want to use that as a day of travel to be in their constituencies on Saturday.

If I could speak briefly to the hours of sitting of the committee, it seemed preferable from the point of view of the committees I have already sat on to terminate the afternoon sitting at 4:30, allowing members to get back to their offices and at least polish off what work is left there while there is still staff available. Possibly some flexibility in hours of sitting could be built in. If another half hour were needed, we could possibly commence earlier than 10 o'clock. But I certainly am reluctant to sit beyond 4:30. From two until 4:30, two and a half hours of testimony, or whatever, gives you quite a bit to digest.

Mr. Mitchell: To resolve the dilemma and to answer some of the things that have been tabled, perhaps it would be appropriate, since we have decided to sit on February 17, that we also retain Thursday morning to discuss Mr. Shymko's particular areas of concern.

Mr. Shymko: I won't be here this Thursday.

Mr. Mitchell: No, a week Thursday.

Mr. Shymko: I won't be here.

Mr. Mitchell: You won't be able to attend, Mr. Shymko?

Mr. Shymko: My committee is meeting on the McMichael bill.

Mr. Chairman: Why don't we take a look at our schedules over the lunch break and we will try to come up with some date that we can agree on? Perhaps we can do something over the lunch break. Before four o'clock, we will try to arrive at a date.

There are a couple of other things we want to talk about before we break for lunch. One, we should mention at least in passing that we did write to the Ombudsman on January 20 informing him that in all probability we would be asking him to appear to



discuss his trip to South Africa. We also mentioned that we would like to be provided with a copy of the Ombudsman's office budgetary submission to the Board of Internal Economy and we stated that since this submission contained salary information on all Ombudsman employees, we would be prepared to receive it with the names of individual employees removed should this be felt appropriate. We received a reply from Mr. Goodman expressing concern over supplying the committee with that information. At this point I will turn it over to John, who may have some comments.

Mr. Bell: Newer members of the committee, forgive me for what appears to be an onslaught of information to you the very first day. Mr. Mitchell, you are shaking your head. I can well understand why. You made a comment earlier that I interpreted as, "Can we have a little time to digest everything that is coming forward before formulating any conclusions or making any decisions?" I think that is a suggestion well taken. On the other hand, it is at my prompting that these matters are being raised as early as possible so that you have the maximum time possible to digest them. It is to give you background to this. It does require a review of the last two committee reports.

There are comments expressed in the report. For example, in the area of time to process Ombudsman complaints, it is ever increasing in terms of duration. This committee is concerned about it. It has so expressed its concerns. Members of the public who have taken the time to make communications are also concerned. The committee said one of the things it will be doing on a continuous basis with the Ombudsman, recognizing this is the only so-called standing select committee in the Legislature, is that it continually reviews with the Ombudsman how things are going, how long they are taking, within the context of your two initial terms of reference.

11:30 a.m.

The chairman wrote to the Ombudsman saying, in effect, "Because we have those concerns which we have expressed, because we do intend to review with you in your office the organization and operation against the background of these comments and concerns, one of the pieces of information which we consider to be of assistance is your budgetary submission to the Board of Internal Economy."

You really cannot talk about what you are doing unless you talk about how you are going to do it and fiscal considerations are very much the how. Also, you have reviewed with him from time to time the matters of the regional offices. We are now talking about the prospect of a third and there have even been some suggestions that there be another one in western Ontario, Mr. Miller's neck of the woods. Again, you cannot talk about what unless you talk about how.

Mr. Van Horne: Has the committee never been given this information in the past?

Mr. Bell: The committee has never asked for it in the

past in the way that it was asked for specifically. It has never come up to that extent.

Mr. Van Horne: I do not know why the salary information should be made so secret.

Mr. Bell: I am wrong, I'm sorry. The committee has received information in the past. The initial schedule of salaries as approved by cabinet was tabled to the committee with the names of those salaries. I cannot be any more specific as to the reason. It was when Mr. Maloney was the Ombudsman, but it was readily tabled.

Mr. Van Horne: Out of curiosity, was there some uneasiness or concern expressed from the staff that this information was made available to the committee?

Mr. Bell: Not the last time. I think in fairness to Mr. Goodman, who is not here and should be given an opportunity to address you on this subject, he expressed a concern to me that the provision of this information to the committee might of itself result in a disclosure of salaries and individuals.

Mr. Van Horne: I think it should be. If we require a motion for that, I would be very pleased to make that motion. I see no reason in the world for that information not being made known to us.

Mr. Mitchell: If I might just interject, I think the salary thing could be handled. I have some sympathy for not having the salaries attached to a name, but they can give us the total number of staff and the salaries paid. I am a little concerned. Those things are generally considered in most situations as personal information.

Mr. Chairman: I think perhaps we are getting off the track here. Mr. Goodman has indicated he would like to know why we--apparently he does not feel we have adequately expressed our reasons as to why we feel this information would be helpful to the committee.

Mr. Boudria: Why do we have to?

Mr. Van Horne: Do we have to justify the reason for it? It is to know whether they have staff capable of doing the work.

Mr. Boudria: Mr. Chairman, if I can just speak to that for a minute. From my very humble background as a municipal politician, which I am sure some of you have shared as well, it is certainly the duty of elected people who are in charge of overseeing a particular operation not only to see how they do their work physically, but to see how they are remunerated as well. I do not think there is anything sanctimonious about us taking part in finding out what it is those people are paid.

For the Ombudsman's office to say, "We don't know if you should see it because you may interpret the figures wrongly, or



you may interpret the figures as meaning something else than we think you should interpret them as meaning"--

Mr. Mitchell: No, be rational. You talk about the municipality. When you dealt with employees' salaries at your municipal level, any time you dealt with them you dealt with them in camera. I think that is the fear being expressed here.

Mr. Boudria: I have no problem with the names being left confidential. I do not even care if names are beside the salaries. But I do think saying, "Why do you want to know what salaries are being paid?"--

Mr. Mitchell: The rationale is to know how many people they have got, whether they are capable of doing the job.

Mr. Treleaven: I would like to address Mr. Boudria's comment just briefly. I think it is specifically in the act that the Ombudsman may operate his office in whatever manner he sees fit. You would have to make it part of the regulations, through this committee and through the Legislature, to get into the information as to the office. I don't think, according to the act, we have that capacity.

I would like to address myself, for which I originally asked the chairman's attention, to some wider points. As a new member here I am amazed at the lack of structure. I don't like to sound like the member for Kitchener (Mr. Breithaupt) coming in with a prearranged schedule, but it seems to me we are inheriting the problems of past committees. It seems we are getting inundated with mush. I am losing the structure of this committee already and I have only been here an hour and a half. It seems to me we are inheriting ills that are brought upon us, one after the other, by past committees. The time is filled with witnesses before we even get here so that we have no ability left to structure our own destiny in these three or four days.

Unless the members of the committee kick over the traces so far as the scheduling is concerned, we are just simply prolonging this matter and passing on the problems we come in with, plus further problems that are brought up, to the next committee, and we are going to end up nowhere. Unless somebody can point out where I am totally wrong, someone like Mr. Philip with experience that I don't have, I am pretty close to setting forth a motion setting out an exact revised schedule of witnesses so we can get on with it and start and finish something, rather than come in the middle and carry it on a piece and then drop it at the end for the next group of fellows.

Mr. Chairman: I think there is a real problem here because the bulk of this committee, at least on this side of the room, has been dealing with this. We are fully cognizant of what we are going to do and how we are going to approach this, but of course extreme changes were made and you chaps were not aware of how we were going to attack this problem. Of course that has caused you a real problem.

Mr. Treleaven: Quite correct, Mr. Chairman. We are

sitting in ignorance, the members here--the ex-justice committee members, may I call them. However, we aren't being allowed enough time to finish anything up. We are simply going to prolong. There isn't time left. We have the Ombudsman-South Africa matter next week. Perhaps Mr. Shymko-- I don't know how we are going to fit it in. He isn't going to be here next week. As Mr. Philip says, it looks as if we are going to be washed out on that, and it seems we are going to be filled with a continuation of this matter and we don't have time left to come to a conclusion.

The terms of our reference are to meet and talk to certain persons with regard to the manner in which we are going to report to the House. Do you contemplate coming up with an answer this week?

Mr. Chairman: No. There is no deadline set for us to come up with recommendations to the Legislature. I think you are operating on the assumption that we have to finalize this before the House sits. That is really not something we have to do. If we find we require additional time to determine just where we want to go on this thing, we can look at including time during the summer recess to carry on with this whole matter. There is no cutoff time in terms of when we have to report back to the House.

Mr. Treleaven: Mr. Chairman, is it not an exercise in futility if a new group comes in next summer? For what purpose are we sitting here for three days?

Mr. Chairman: You could call it an exercise in futility, I don't know. It was determined by the committee last year--and Mr. Lawlor is coming to apprise us of what happened--the estimate was that 75 per cent of this effort had been completed. It would be unfortunate if indeed this committee couldn't come back with a recommendation.

With the exception of Mr. Miller, this committee has completely changed since it originally dealt with this question of human rights. Mr. White has provided us with a summary of what has happened in the past and we are, we hope, going to be able to draw on that, and with the interviews that we have arranged, come up with some conclusions. I agree with you it is kind of a mishmash and an inappropriate way to proceed, but I don't see any other option available to us.

11:40 a.m.

Mr. Philip: I don't agree that it is an inappropriate way to proceed. We do have a schedule before us, we do have a matter that was clearly referred to us. I am supportive of Mr. Shymko inasmuch as he made a compelling argument that this tack-on, or his concern--which is also my concern--was a logical outgrowth of this. But we do have a schedule proposed by legislative counsel and by the work of our clerk. I think that we do have to report back on the matter which was sent to us by the Legislature, and that is our schedule.

While I am supportive of Mr. Shymko we may well want to report back to the Legislature that additional time is needed to



give proper consideration, and proper research, to what Mr. Shymko has requested. It may well be, as has been suggested by one of our members earlier, that we will want to ask the House leaders to give us permission to sit while the House is in session--I think they are going to take a very dim view of that--or we may want additional time during the summer months to deal in greater depth with Mr. Shymko's issue.

But we do have a schedule that has been proposed and people have been invited. I suggest to you that we must stick to that schedule. At the same time, since this afternoon we will have an hour, we could discuss scheduling further if that is your wish.

On the matter of the salaries, it seems to me that the mandate of this committee is to look at the manner in which the Ombudsman's office is operating and to make constructive proposals concerning ways of improving that. I find it hard, from a management point of view, and I would suggest to you that we are the managers of the Ombudsman, managers in the sense that our purpose is the same as perhaps a management consulting firm brought in by a company to make proposals for improvements. You cannot do that without examining individual salaries and job descriptions.

It may well be that certain positions are underpaid for the market and that in order to get the kind of person who will fulfil a certain position, you may need to pay more. It may well be, though, that there is also money being squandered unnecessarily on certain positions which are either overpaid or, indeed, which should not exist at all. Or, there may be too many people in one category and not enough in another. Therefore I suggest to you that it is perfectly appropriate for us, not necessarily to have the names of the persons, although I do not see anything particularly wrong with that, but at least to have the job descriptions and the salaries attached so that we can examine the efficiency of the operation.

Mr. Chairman: I am in agreement with that. I think we just touched on the salary aspect of that report. It really is a global budget. It deals with all aspects of the operation of the office, and I think that is something this committee has concerned itself with and will in an ongoing way. I think it would be a useful tool for the committee to refer to in terms of appraising the operations of the office. So it would be perhaps appropriate at this time to have a motion reaffirming our request for provision of that information.

Mr. Boudria: I so move.

Mr. Chairman: Any comments?

Mr. Shymko: I would stress that there is no point in detailing the names of the individuals.

Mr. Chairman: Oh, yes, I agree.

Mr. Shymko: We go through estimates and we do not go as far as demanding from the various ministries the detailed

submission of salaries for the interministerial staff and others.

Mr. Chairman: There is no question of that.

Mr. Shymko: So make it general enough that we get the information we would like to have and yet not embarrass anyone by having individuals named.

Mr. Philip: May I ask a question of the clerk, Mr. Chairman? Would it be appropriate, if on examining this, if at some point in time we may decide, as a committee, that certain operations of the Ombudsman could best be handled by the public accounts committee, and make a motion at that time to ask the public accounts committee to look into certain operations of the Ombudsman?

Mr. Chairman: Instead of going off on another tangent, I wonder if we cannot leave that until some other time when we can put it on the agenda.

Mr. Philip: My concern is that we not spend our time doing things that perhaps public accounts can better handle with all the assistance they would have from the auditor.

Mr. Chairman: We do have a motion. Are there any further comments on it? Is everyone clear?

Mr. Mitchell: What is the--

Mr. Chairman: Can we have the motion read?

Clerk of the Committee: Mr. Boudria has moved that the committee request that the Ombudsman provide to the committee the budgetary submission of the Ombudsman's office to the Board of Internal Economy of December 14, 1981, with names of individual employees removed, if deemed necessary.

Mr. MacQuarrie: I think that resolution might more appropriately be clarified to indicate job descriptions and salaries attached to the job descriptions, if this will satisfy the--

Mr. Chairman: That's correct. It did not have job descriptions. The clerk and I have seen the document, and it does not have job descriptions.

Mr. MacQuarrie: Mr. Philip mentioned the job descriptions. I am rather at a loss. As has been pointed out, we started out basically considering a resolution of the House, and we were hearing delegations on that and witnesses. I was under the impression we would come up with some recommendation dealing with that resolution. Then we have, for the most part, agreed to attach--there is another item to be considered, the matter raised by Mr. Shymko. Now we are looking, as a third matter, into the salaries or the expenditure of the Ombudsman--

Mr. Chairman: Before you go any further, we are dealing, in this sitting this week, with the House resolution. We set aside



this morning to deal with what you may term housekeeping matters and scheduling for further matters. This afternoon, we are going to talk about Mr. Shymko's suggestion and when we can fit that in somewhere down the line. In terms of the next couple of days, we are simply dealing with the House resolution, and that is all. This morning is really to try to get rid of a lot of things on our plate that are of a minor nature and at some point--

Mr. MacQuarrie: In regard to the housekeeping items you refer to, Mr. Bell raised the matter of communications received that should be dealt with by the committee at some point down the road. Assuming we support Mr. Boudria's resolution, and there is certainly nothing wrong with it, it is just a question of when it is going to be considered--at some point down the road?

Mr. Chairman: Yes. That is the intent, at a future sitting of the committee. As I indicated, one of the ongoing roles of this committee is to take a look at the operation of the office. Perhaps, as new members, you will be touring the office and viewing the operation. We are hopeful this information on hand will improve your actual understanding of how it functions. It is something to assist the committee with at some point down the road.

Mr. MacQuarrie: I would suggest this resolution should be dealt with, because I would like to bring forward another resolution or obtain the consent of the committee with respect to the hours of sitting.

Mr. Chairman: All right, fine. Can we deal with this resolution?

Mr. Mitchell: Would Mr. Boudria be prepared to amend it? The suggestion has been made that it identify positions and job descriptions.

Mr. Chairman: We are just asking for this document.

Mr. Mitchell: Perhaps Mr. Boudria could still amend it to, "if possible, provide the job descriptions for the various positions."

Mr. Chairman: I don't think that will be a problem. We can have that information supplied to you.

Mr. Shymko: I also suggest in regard to the words "if deemed necessary" with relation to naming individuals, either we want them named or we do not want them named. Naming some and not naming others does not make sense to me. We could simply delete the words "if deemed necessary."

Mr. Chairman: Amend it to say "delete names" or "names deleted."

Interjections.

Mr. Chairman: All right.

11:50 a.m.

Mr. MacQuarrie: You want to know too what salaries attach to what positions.

Mr. Chairman: Yes.

Mr. Runciman: You will have an idea.

Mr. Chairman: The salary will be attached to the position. Any further questions? In favour?

Motion agreed to.

Mr. Chairman: John wants to make a couple of brief comments on what Dick brought up in his concerns.

Mr. Bell: I am dying to. Members of the committee, as Al Waxman said in a certain commercial, "Trust me." What you have been assaulted with, and I use that word advisedly, this morning essentially is the two functions of this committee. One function is a continuous function flowing from the two principal terms of reference. The other function is very special in nature. The House by special resolution gave this committee an extraordinary authority respecting that resolution. If you want to put a label on this week, it is resolution. I can quite understand how you are geared to that. When you are assaulted with the other matters, if I were in your position, I can well understand it. So to the extent that Mr. Treleaven's "mush" analogy is appropriate, I accept the responsibility to endeavour to keep you on track on a continuous basis.

I have a suggestion, Mr. Chairman, and I think it is a workable one--to the extent that we have discussed and will continue to discuss those continuing issues, that they be deferred until we get all the matters on the agenda respecting the special resolution completed. Then you can cleanse your minds if you will, and if we have to take a period of time, there is another item on the agenda called "counsel's dinner" where counsel once or twice a year, on his own hook, treats the committee members to a little repast and a tea.

Mr. Piché: As long as it's only tea.

Mr. Bell: Yes. To the extent that you require a further briefing of the continuing matters, we can do it then. It is the first time it has ever been suggested this committee was not organized and structured, Mr. Treleaven. I have been criticized by some members and others in the past for the very opposite. You haven't yet been treated to my famous schedule and cross-indexing with a tab index, which again will boggle the mind for other reasons.

Mr. Shymko: Is that a threat?

Mr. Bell: Yes, it is a threat. If we can agree to defer those continuing matters and let you get your minds wrapped around the resolution, the light will be seen at the end of the tunnel.



Mr. MacQuarrie: We might get some understanding from the committee as to the hours of sitting. I would be prepared to move a motion with respect to the afternoon sittings, that they end at 4:30.

Mr. Chairman: I think it will be unnecessary unless there is a difference of opinion. We will operate under the understanding that we will break at 4:30.

Mr. MacQuarrie: It will be 4:30 unless there is unanimous consent to sit beyond.

Mr. Chairman: Yes. We will break now for lunch and see you at two o'clock.

The committee adjourned at 11:54 a.m.

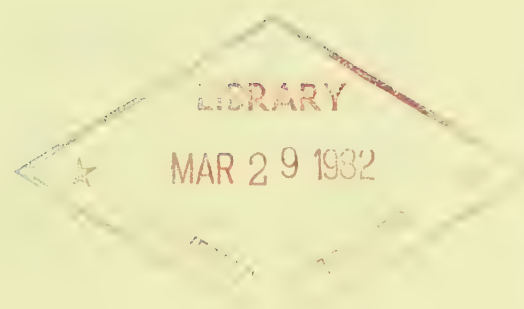
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SELECT COMMITTEE ON THE OMBUDSMAN

HUMAN RIGHTS

TUESDAY, FEBRUARY 9, 1982

Afternoon sitting





SELECT COMMITTEE ON THE OMBUDSMAN

CHAIRMAN: Runciman, R. W. (Leeds PC)  
Boudria, D. (Prescott-Russell L)  
Cooke, D. S. (Windsor-Riverside NDP)  
Gordon, J. (Sudbury PC)  
MacQuarrie, R. (Carleton East PC)  
Miller, G. I. (Haldimand-Norfolk L)  
Mitchell, R. C. (Carleton PC)  
Philip, E. T. (Etobicoke NDP)  
Piche, R. (Cochrane North PC)  
Shymko, Y. R. (High Park-Swansea PC)  
Treleaven, R. L. (Oxford PC)  
Van Horne, R. G. (London North L)

Clerk: White, G.

Consultant: Bell, J., Counsel to the Committee

Witness:

Neiman, Senator J., Canadian Representative, Inter-Parliamentary  
Union

LEGISLATURE OF ONTARIO

SELECT COMMITTEE ON THE OMBUDSMAN

Tuesday, February 9, 1982

The committee resumed at 2:14 p.m. in committee room No. 151.

HUMAN RIGHTS  
(continued)

Mr. Chairman: Since Senator Neiman doesn't have too much time, I will call the meeting to order. I would like to welcome Senator Joan Neiman, who is a Canadian representative on the Inter-Parliamentary Union and is an executive member of the Inter-Parliamentary Union, and is also a member of a special committee of parliamentarians who review violations of human rights. Senator Neiman, on behalf of the committee, I want to welcome you here today and to thank you for taking time out of your schedule to appear. At this point I will turn the floor over to you.

Senator Neiman: Thank you, Mr. Chairman. It is a pleasure for me to be here and I hope that I can give you a little bit of information that may be of use, or at least of interest to you. I am, as you have said, really appearing in my guise because of my interest in human rights and more particularly as we act through the Inter-Parliamentary Union.

The Inter-Parliamentary Union, if you really are not familiar with it, is an organization that is almost 100 years old now. It was founded in 1888 by an English member of Parliament and a deputy of the parliament of France at that time, who felt that it would be very useful to have an interchange of opinions between parliamentarians, rather than always on a government-to-government level. It was felt that it would be very helpful for all people who are elected members or appointed members to be able to talk to one another rather than always on an official level.

It started, I think, in rather a modest way and grew. It stopped for a few years around the turn of the century when for one reason or another it was not too active. At this point you might really characterize it as the parliamentary version of the United Nations. I would say that the United Nations and the formation of the United Nations in many respects is actually based on the way the Inter-Parliamentary Union was put together.

Many of our committees and subcommittees and the way we deal with subjects are very similar to the United Nations. I would say that probably the United Nations really emulated a lot of the work that the Inter-Parliamentary Union has done. We now have up to 90 member countries.

The original idea was that it would only be members from "democratic" countries who would belong to the Inter-Parliamentary Union, but like the United Nations, that word has sort of been stretched to its outermost limits. The feeling in both organizations is that it is better to have people there and sit



down and talk to them than to exclude them and try to wrestle with the problem of what is a democratically elected parliament.

Through the years, or certainly in the last 20 years, the Inter-Parliamentary Union, which meets twice a year and has its headquarters in Geneva, has had a spring session and another session usually right at Labour Day. The spring session is what we call a working session where we prepare papers and do resolutions based on subjects that have been decided the previous fall at the general meeting. When those resolutions are hammered out at the spring meeting they are taken forward to the fall meeting, which is usually much larger.

About twice the number of delegates go to the fall meeting, along with staff, and these resolutions are passed there. They look and sound remarkably like what you get out of the United Nations, so you may judge for yourself just how much force or legality they really have in terms of being able to implement any of the decisions that are taken there. I think the greatest benefit to be derived from it is that you are talking with people elected, appointed and, however they arrive there, members from all these various countries. Some countries tend to send the same members year after year, particularly the east-bloc countries.

2:20 p.m.

We send our members from Canada based on our representation in Parliament. We have a spring meeting coming up in Lagos to which we are sending eight members. They are divided at the moment into three Liberals, two Conservatives and one New Democrat from the House, and one Liberal and one Conservative from the Senate. Both houses are represented; all parties are represented. The idea is that you go there to express your personal opinions; you do not go to express government policy. That again is one of those precepts of the union that is probably more honoured in the breach than in the practice in many of the countries.

I can remember the first meeting I attended in London back in 1975 where our group chose to split on the vote, and it caused great astonishment in the east bloc because they just turn and they vote en bloc on everything. I think the Canadians actually encouraged them to loosen up a bit. I have on only a couple of occasions ever seen a member from an east-bloc nation abstain, let alone vote against the general number in the thing, but at least it's beginning to happen a bit.

In the last 20 years we have taken a greater and greater interest in the question of human rights. We didn't have any format, particularly, as a group, because you can understand that being an international group of that size, membership in it is based very much, as it is in the United Nations, on the size of the country, on the contribution that is made to the upkeep of the union. So you had the Soviet Union with the same number of votes as the United States. You have the same kinds of standoffs in voting patterns as you do in the United Nations.

So in the Inter-Parliamentary Union as a whole it was very difficult for us to deal with questions of human rights. There

were always many arguments as to why you were infringing on the internal jurisdiction of a country if you got into that sort of thing, and it was constantly being blocked for one reason or another.

I may say that this is not just a characteristic of the east-bloc countries. It was one thing for one of the other countries to get up and condemn something that might have been going on in some area of Africa; but if anyone were to criticize, for instance, many years ago what Portugal or Belgium might have been doing down in Africa, they immediately said, "Those are our colonies; this is an internal problem, and it should not be discussed on an international stage." So we have had to work through the same kinds of objections on an international scale.

However, just about the time I got interested in it we were really seeking ways to do something a little more active to promote human rights, because, of course, we had so many examples of flagrant violations at that time in various countries, and in the spring of 1976 we finally put it all together. We had been pushing to set up a special committee to examine violations of human rights against people generally, and it had been consistently blocked.

In that spring we had our meeting, which, as I say, was a working meeting, in Mexico City, and I happened to be heading up a juridical committee and prepared a paper for that committee. We put forward a proposal to set up a special committee at that time, and again it was blocked.

However, we managed to get a lot of support. I did not think we would get as great support as we did because at that time a great number of the African nations were really following the leader, which was the east, the Soviet bloc, at that point. We did not have an enormous amount of support, generally, for this sort of thing, but we decided to change it.

Their objection at that point was that we were simply duplicating work that was being done by Amnesty International, the International Commission of Jurists, the International Labour Organization and, of course, the United Nations Commission on Human Rights. Their argument was that there was no point in simply adding another committee to do the same thing. That is why we suddenly decided maybe we could get through a more restricted kind of resolution, and that is how we ended up with this Special Committee on Violations of the Human Rights of Parliamentarians. You have been made aware of this committee.

We argued that we were an international organization concerned with parliamentarians, and therefore we were prepared to restrict our investigations to possible violations affecting parliamentarians in certain countries. We had numerous examples of parliamentarians, in Argentina and a variety of other countries, who were jailed or disappeared, or had been subjected, as we knew, to torture.

That is what we have done. This committee meets at least twice a year at our head office in Geneva. It is composed of five



permanent members, so-called, and five substitutes. The five members are drawn from different geographical areas around the world. We have one member representing the Soviet bloc; one member representing the so-called western nations, which also include Australia, New Zealand, Japan and a few other nations; an African member; a South American member, and an Asian member for all the Far East countries.

Those five people meet with our secretary-general twice a year in Geneva. I am the substitute, what you might call almost the permanent substitute, for the western member. Last summer, after all these years, was the first time I attended what was our fourteenth session of this committee in Geneva, when Mr. André Chandernagor of France was elected to parliament with the Socialist government over there. He had been our permanent member, representing the western group.

I do not know if you all got copies of these, but we deal on a very formal basis with these complaints. We handle them very carefully. Anybody in the union, or from any other source, is entitled to send in a report. We work very closely with Amnesty International. You will probably find the same names appearing in a variety of different investigations, including the United Nations, Amnesty International, the International Commission of Jurists and a number of others.

It is not an easy subject to deal with at any time. Some countries have been absolutely intransigent in providing any kind of information. We get the usual diplomatic notes back after a long time, but as a committee we simply have to try to bring in information from as many reliable sources as we can.

2:30 p.m.

When our secretary-general gets the name of somebody, he checks it out himself first to be sure it is a bona fide complaint or situation. Then it is brought before the committee for a decision on what should be done with it. Usually, in my view at least, it takes a long time. It seems to go very slowly because it is always done on a very bureaucratic, diplomatic level, if you will. Great care has to be taken that we do not infringe on any of the diplomatic proprieties in any way.

We work quietly through our own Department of External Affairs. If we give them names, they in turn write to their ambassadors or representatives in the countries concerned and put out inquiries, trying to get some information. These people may have been in prison for years without trial. Others, we know from reports, have been subject to torture. Others we are almost certain have disappeared and are almost certainly dead in some of those countries.

One of the greatest problems we are having today is with disappeared persons because, as Amnesty International probably told you, if they cannot be traced within a matter of weeks, you can almost take it for granted they have probably been killed. You get a most imaginative variety of answers about why these people seem to have disappeared from the face of the earth. There is

really very little we can do about it, even on a nation-to-nation basis. My feeling is that the greatest benefit we get from it is the constant pressure of bringing it back to them, of making it public.

We start off with confidential documents. These documents you have seen were treated as confidential for probably three years. Uruguay, which has a number of very bad cases, simply does not answer us. We are up against a blank wall all the time. The only thing we can do is first start off on a confidential basis and ask for information. Some countries are very susceptible to that and very ready to try to explain to us what has happened, not so much from the South American countries but some of the Asian areas and some of the African countries. If we ask them, they will at least come back and give us an explanation.

Confidentially, in a few instances we have managed to have people released and their sentences reduced. Some of them at least are given a trial. They have never been charged and we have been able to expedite that. But I have to tell you that our score is not very high on any basis. We just have to take some satisfaction and live with a relatively modest success in a very few areas.

The best thing we can do is just continue the pressure. My feeling is that I would encourage more groups--you are forming some sort of a group here, an association--because I believe that publicity is the greatest weapon, the most effective weapon we can have to make the public aware of what is happening. That, as you know, has its problems and can also backfire on us. You know, occasionally we have a finger pointed at us about, "What are you doing about your native population?" and we had our own example of a Senator Lovelace, who has taken her complaint to the United Nations and should have. Canada has acceded to the protocols down there, and you know that all the provinces are part of those protocols. I think it was a perfectly valid application that she made.

The problem is that on an international basis, as you probably have learned, not too many of the countries have acceded to those protocols, so they do not feel they are bound to answer to them if they do not want to.

I do not know whether you would prefer to ask me some questions on that basis.

Mr. Chairman: Senator, you mentioned publicity being the greatest weapon. Our mandate is to come back to the assembly with recommendations on ways in which the assembly may act to make its voice heard against political killings, imprisonment, terror and torture. I am just wondering if you have any further observations on ways we could accomplish that.

Senator Neiman: We just wrestled with the problem again in Ottawa a month or so ago. I gather that ambassador Beaulne has appeared before you, spoken to you or testified. As you may know, he is over in Geneva right now at the meeting of the commission. He is chairman, and he is an excellent chairman, and I think he has brought a great deal of credit to Canada. Canada has a great



deal of credibility on the international scene in the field of human rights, for which I think we should all be grateful.

Before he leaves for Geneva every January, a meeting is called in External Affairs to canvass the various nongovernmental organizations and anybody else who is interested in putting forward some ideas of how we can advance this whole process of trying to reduce the number of violations of human rights, and literally what we can do about it. The meeting was held just about a month ago before ambassador Beaulne left, and this question arises constantly, "What can we do as individuals or as organizations, as Canadians?"

Number one, it is very obvious to us that the general public in Canada is not aware of the work that is done by Canadians in various organizations or through government. It is the old question that it does not make very good press, so the press more or less ignores it, and it is a question of trying to feed things out to it, to let the press know about it.

We think that is important. We look for different ways of trying to get Canadians generally more conscious of what we are doing and getting it beyond that. We have had some successes in the international arena in getting various resolutions through at the United Nations. They probably get two inches of type on the back page of a paper.

2:40 p.m.

I would like to see all our provincial legislatures involved in some way in an input. But it bothers me too, and I am sorry I can't give you any clear answer or really helpful advice about the best way we go about this. It seems to me we do have to find a forum, and it should be the United Nations, but I think it comes through a complex of organizations back here urging our federal government in turn to urge the United Nations to publicize these areas more frequently and more strongly than they have in the past.

There are a variety of things that happen. You are up against international protocol. What in the name of heaven can we do about torture in Uruguay? What can we do about torture in Iran, apart from the incredible number of executions that are occurring on a daily basis?

Mr. Gordon: Senator, I find what you have said very interesting. I think all of us in the committee can detect the frustration your group must feel at times, knowing about cases like the ones you have dealt with that I have just been glancing at here. It would seem to me to be one of the reasons why your group or a parliament like ours should do everything it can to expose torture, brutality by dictatorships, because that is what they are, pure and simple dictatorships, and they have no feeling for people. The only thing they are interested in is power.

One of the things we should keep in mind, and this is where I think people who deal with this subject should not get discouraged, is that one of the first things you are doing by publicizing these kinds of activities in other countries

throughout the world is helping to maintain an attitude among the public in the free world. You are sensitizing them to a point where they will be even more jealous and more protective about the rights and privileges of people who live in democratic societies and be more aware of the dangers and what happens when you get dictatorial regimes, so we will not take our freedoms for granted.

I am sure the member for High Park-Swansea (Mr. Shymko) knows very well what happens when people take their freedoms for granted. I think that is number one, and one reason why parliaments such as ours should give a forum to organizations such as yours and Amnesty International and others who are protesting violence against humanity and against people. First of all, almost from a selfish point of view, if we believe in democracy we should make sure we let the populace know that these things are happening outside of democratic countries.

The second thing is, it is quite obvious, looking at history or looking at what is going on right now, that where you have situations where you have hundreds of people--let's take Iran, for example--being slaughtered, tortured, whatever, there is not the same reaction, it would seem, from a populace such as ours. But you will notice that the greatest amount of publicity has come from places where groups such as Amnesty International or yours have singled out individuals and begun a fight throughout the world either to free them or in some way to ameliorate the conditions that they are being held in.

I guess this goes back again, in very simple terms, to the fact that people are often more concerned about the specific and something that is very concrete to them and something they can see. They can identify with one person, but they find it very hard to identify with hundreds of people, which is unfortunate, because as human beings we all have an investment in each other.

So I really believe we should do everything we can to try to find ways, but I can see that it must be very frustrating for your group at times because obviously these people here are still being beaten, are still being tortured, their families in one way or another are still being subject to the threat of arrest, and yet you are trying as one group of human beings either to free them or to help them in some way. I think it is worth it because I believe that with every person, no matter what you do it is like a ripple: if you keep sending these ripples out, some day maybe good effects will come of it.

Senator Neiman: I agree. There's one other area to which I think we all have to be sensitized. As you know, as soon as a group or a particular group starts talking about violations of human rights, whether it is in South Africa, Brazil or somewhere else, there will be groups here who immediately say: "Why are we trading with them? Why are we dealing with them?" This is a very, very difficult question for governments to answer in any way.

I think there should be a lot more open discussion, not only at the federal level. Usually it lands squarely on the federal government but it is not necessarily always the federal government that is interested in keeping trade open with a particular



country; it may come from a particular province for one reason or another because of a certain product, export or whatever the case may be.

In the average person's mind you cannot divorce these two things; it is very difficult to. And it is very difficult for them to understand that there may be perfectly valid reasons. I am not saying there always are. But even if you take Poland today you will get the division of opinion in which one says we should apply sanctions while the other people say that the only thing you are doing is hurting the people over there.

You get the same type of reaction with people, so that what we are trying to do, as we very often do and have to do at a federal level, is to apply pressures, as much pressure, in the first instance confidentially or on a diplomatic level. I think the overall feeling is that we keep open the channels of communication; we don't break diplomatic relations with a country because we have decided that they violated the human rights of a dozen or even 100 people. The idea is usually to try and keep the channels of communication open.

We have this other very valid obligation, which is to try to keep international channels open for trade and everything, because we find, and I'm sure you would agree, that it is often through trading, through moving in there, through being able to talk to people that they become more aware of the fact that actions they may have thought were perfectly all right and inoffensive to people in general, because they have always done them, are simply not condoned in other parts of the world, and that their reputation as an international body, as an international trader is going to be seriously jeopardized. But it is a difficult problem to deal with at all times, and we have examples with the terrible situation of El Salvador today.

2:50 p.m.

I feel all provincial legislatures should be aware of the problems and they should make their own decisions in the light of the information they have, but I would like to see any group that was seriously looking at these questions in different countries have a channel into the federal government as well. I think we should be working as individual organizations on an international level because, as you and I both agree, the more people and the more organizations that become involved and become aware, I think the more changes we can look forward to in the future.

Mr. Philip: You brought out an interesting point about how the actions taken by a federal government also have repercussions, particularly in terms of trade provincially. Is there anything within the terms of reference of the Inter-Parliamentary Union that says it is only federal legislators or federal members that are to be members of this, or is there some way in which provincial parliaments can feed into that either in an official or unofficial manner?

Senator Neiman: Within the constitution of the IPU it is really federal, it is composed of the national group, that is what

it is. This committee we have is empowered to take communications from any reliable source, which includes any government source, and AI is always considered a very reliable source and there are others as well. So there are always channels of communication that way, through the IPU into the special committee. We, in turn, report regularly.

When we hold a meeting of the special committee of the IPU, we report to our own Department of External Affairs as to what, if anything, we have accomplished, or if we are running into some problems, asking them for more information, or if they can add a little pressure here or there or whatever it may be. We also keep in touch with the United Nations through our External Affairs, through our United Nations Commission. We try to keep a linkage there. Provincial groups are not admissible in the IPU, whether states in the United States or anything else, but there is certainly a way you could communicate to the special committee.

Mr. Philip: If I understand you correctly though, the various delegations appoint their own representatives to the IPU, so it would be possible for a federal government in any country to appoint politicians, not to the federal level of government but to another level, as their representatives, or indeed bring them along as representatives of provincial governments or of other levels of government with them in their delegation, would they not?

Senator Neiman: I do not believe so, Mr. Philip. I did not bring a copy of the constitution with me today but I remember very distinctly that what we talk about in the IPU are national groups, and that means the national government, the national parliament, whatever it is. They are the only ones.

Now, they have admitted observers to the meetings. I think Amnesty International itself is admitted, is recognized as an observer to our meetings, but they are not there as part of the official delegations.

Mr. Philip: And those people whose torture or loss of life or disappearance you are concerned about are only people who are elected to national governments, or are they people who are elected to any office and who disappear?

Senator Neiman: No. I would really have to go back. I can't even tell you what the Argentinian government--it changes so many times--

Mr. Philip: If a mayor disappears in Argentina, then, would that be a concern to you, or only somebody who is part of the national assembly--

Senator Neiman: No. We are talking about the national assembly, really. I may say that we have done a couple of special things also under the aegis of the IPU. A number of very immediate concerns were expressed about the trials of some Turkish parliamentarians that are taking place right now. I think they are actually adjourned at the moment. At one point the IPU special committee voted to approve sending a single jurist, for which we paid a retired French judge, to go and monitor the trials--there



were a half dozen parliamentarians in Turkey last year, or a little over a year ago right now--and to report back to us on that.

It turned out remarkably well. You are never quite sure how things are going to be taken, but the gentleman we sent was a very distinguished retired jurist of France who was internationally known. He went there and was given a fair amount of freedom to talk to the prisoners, to talk to their counsel and to satisfy himself that they were getting a fair and open trial. That, of course, is another thing we were concerned with: to see that if they get a trial it is conducted properly. I do think that had a very salutary effect.

A few years ago we put together, approved, a special group--not anyone from our standing committee but a special group of about three South Americans--to go down and investigate all the complaints and cases we had from Chile. They were refused entry to Chile at that point. There was nothing they could do; they just had to turn around and come back.

One of the other difficulties or frustrations we have is that frequently when we write to a country about a parliamentarian who we know is jailed or has been tortured or something they write back and say, "He is not a parliamentarian." On such and such a date he was a parliamentarian. The answer we get back is that because he was guilty of having preached sedition or done something, his parliamentary rights were taken away from him as of the day he was hussled out of the House or wherever it was, and therefore we have no jurisdiction even to talk about this any more. That, again, is a very frustrating kind of answer to get. We have had that from countries like India and many countries.

Mr. Boudria: Mr. Chairman, I have just a couple of observations. I know Mr. Gordon was saying a while ago that we tend to focus more on those issues that involve individual persons as opposed the situation in Iran, for instance; we are very much interested in the case of one parliamentarian in one country. But that is not always the case. I'm sure that if you were to go out on Yonge Street right now and interview people about the conditions of the government in Argentina vis-à-vis one of these people whom you are--

3 p.m.

Senator Neiman: Mr. Carnevali.

Mr. Boudria: Yes, Mr. Carnevali or those people. They would have no idea whether those countries have deputies or members of parliament, much less whether they are imprisoned or what they have been imprisoned for. Even though you as a person deeply involved in that type of thing are very concerned, have expressed all kinds of concern in an international forum about the conditions of these elected officials, in spite of what Mr. Gordon says I fail to see that it has captured that kind of attention locally.

I'm sure, for instance, that people would know the name of Bob Rae a lot more than they would that of Mr. Carnevali this

morning if you were to go and talk to them on Yonge Street. And there are obvious reasons for that: Things are covered in a different manner by the press when they perceive them as being of greater interest.

But I'm wondering beyond that just what we can do as a Legislature. Do we do such far-fetched things as publishing our annual list of the 10 worst violators of human rights as we see them? Do we do this in the form of a resolution in the House to bring public attention to that kind of situation? Is doing such a thing breaking with all kinds of other diplomatic traditions that would not achieve anything?

The other thing, of course, as you have mentioned, is that our condemning some of these governments comes right back to haunt us at times because they are exactly the same people to whom we are selling uranium to operate the Candu nuclear reactors we sold them two years ago or some other things like that. It is a very difficult situation, as you have expressed. Does one encourage constituents to boycott products personally from certain countries that have no respect for human rights? Is doing that really going to achieve anything? Or is it going to punish the person at the bottom end in that country who is going to be deprived of an income instead of resolving the problem of obtaining freedom for that parliamentarian?

The other thing, of course, is that boycotting or imposing trade sanctions on any one country does not mean that they will be affected in any way. As we noticed with the American Russian embargo of a few years ago and the Afghanistan issue, the only people who were punished were the Americans, because other countries just seized the opportunity in order to increase their own revenues.

It is maybe somewhat cynical to say that we should continue to do business with a country we disapprove of because if we don't somebody else will, but unfortunately in many cases that has proved to be exactly what has happened, I think. It is so unfortunate.

I wonder if you could comment on some of those things.

Senator Neiman: Mr. Boudria, of course, you are right. I really am of the opinion that trade sanctions or encouraging an individual not to buy a product from a certain country in itself really is not getting at the problem of our perception or anybody's perception of what constitutes a violation of human rights. I have a daughter who disagrees with me strongly when it comes to areas such as South Africa or something or buying things from South Africa in one sense.

I'm not sure that that is the way we can go about it or that it is the best way of going about it. I feel that, really, if we could put some teeth into our international forums, particularly the United Nations, that is the best way to apply it, and it's simply more by sanctions. I know they pass resolutions and they do this, but I think if you get to the point where they oblige the United Nations to publish lists itself--I do not see the point in



a whole bunch of individuals doing it because it would not really mean anything to anybody here. They might sit down and read one list like that one day, but I can show you lists that go on like this that are absolutely horrifying; the sheer numbers of them tend to stun you or to almost turn you off at times because you begin to think, "Are we trying to change the world?"

Amnesty International does very well. Church groups are adding more and more pressure to make our federal government stand up and declare itself, as ambassador Beaulne is doing in Geneva today. But on that basis we achieve more than we can on an individual basis. Of course, the individual person who is being persecuted, whether it is somebody from the Soviet Union who is not allowed to emigrate, captures the public imagination; it acts as a focus and it is a good thing in itself. I am sure the Soviet government was simply writhing under that kind of international publicity for a while. It was very glad to get rid of it, and I think more of that is probably a good thing.

I may say that one of the difficulties we have is that we do not get any complaints from the east group very often, and there are two reasons. I listened to somebody from Amnesty International being interviewed on the radio yesterday morning. One thing is that a lot of the Soviet groups go in more for types of psychological torture, which can be just as real and just as damaging as some of the very obvious physical types of torture that many of the other countries indulge in. The other thing is that they get back to the business of saying, "These people were never parliamentarians, because they violated their oath of office by doing this or by protesting or something like that, so they are automatically excluded from parliament or government." They just refuse to answer us on that one.

Actually, the other real reason is that we just don't get to see these people or get people who can report to us. So we have a far greater number of cases that, while they are genuine, represent every other country in the world, practically, except the Soviet bloc. We just haven't dealt with a case from any of the Soviet bloc in the five or seven years we have been dealing with this, and very few organizations have.

In partial defence of the Soviet bloc I might say that the instances of out-and-out physical, incredible, dreadful torture from other countries are far greater than anything we could possibly amass in terms of information from any group in the Soviet bloc, so there is a difference there again.

As a group here when you are asking whether it should make its voice heard against political killings, imprisonment, terror and torture I am not sure about the niceties here. But, for instance, when we pass resolutions, whether you can convey these personally to the countries involved or whether simply by publicizing through your own committee your abhorrence of blatant political killings as they occur and asking your government to do something, or work through the federal government if that is the appropriate channel, that is at least the beginning. It is that extra drop of water, that extra pressure which we can add. I really cannot give you anything more definite.

3:10 p.m.

Mr. Shymko: I would like to ask you a few questions, senator. It is obvious at the very beginning of your remarks that you stated the word "parliamentarians" or the words "democratic systems" have been stretched to the point of the ridiculous and today, at least by definition, everyone lives in a democratic system and we, in our definition of parliaments in a free society, certainly would question places like Haiti, which has been mentioned. Bodies such as the International Association of French-Speaking Parliamentarians are concerned that the word "parliamentarians" is qualified. That is the first frustration, the definition of parliamentarians and parliaments.

I can understand the difficulties you have had in trying to press for a committee that would condemn violations of human rights per se generally affecting all citizens, but you were limited now to violations of the human rights of parliamentarians only. In governments where you have a one-party system, unless there is an open purge, you would not see violations of the rights of parliamentarians as such. I look at the report of March 1980 and look at Uruguay, Argentina and Chile. It was part of a special committee on the human situation of Latin America.

Has there ever been an attempt, or is there at least a chance of having a special committee on human rights, for example, in eastern Europe? Can you envisage such a special committee ever being formed under the present structure of the Inter-Parliamentary Union? I look at the resolution, for example, with regard to Uruguay and I compare it with the situation in Poland. It says, "To restore forthwith the rule of law by repealing the institutional acts." The institutional acts are the state-of-emergency acts listed as suspension of elections, creation of the Council of National Restructuring, which is the same as the Council of Salvation in Poland, and I can see almost a parallel.

The fifteenth session will be meeting in Geneva. You can see the parallel between Uruguay and some of the countries where you have a military junta and martial law. Can we count on the possibility of Poland, for example, or any country in the eastern bloc, being raised as an issue in the fifteenth session of the meeting of that committee? What is it in the structure which prevents even the possibility of forming such a special committee? If the structure does not allow it, I would like to know your frustrations. What is the point of going on?

Senator Neiman: The structure has strictures and our special committee really does deal with individuals to a great extent. That was sort of the wedge in the door to try to look at some of the problems in South America. As I say, we failed because we could not get in the door on any of these.

Mr. Shymko: But you have some success in some cases. They at least had a trial.

Senator Neiman: Yes. On an individual basis we have had



a little success, but in totality, when you think of the number of persons of whom we are aware from any one country, our successes have been quite small.

Mr. Shymko: Can you raise the issue of Poland within the framework of that organization? Is there any way that you can at least raise the issue or set a special committee?

Senator Neiman: Where we would have to do it is not through the special committee. The special committee is not empowered to look at a country as a whole or the actions of the government really. We could take individual people. I have no doubt that we could raise the question at our spring meeting of all the countries, and probably it will be raised and I have no doubt there will be a debate on it. I will not be attending that as far as I know.

But I have no doubt the Soviet bloc will try to block any discussion of it, any bringing of it to the fore, because of course we have all these rules and regulations on how one can bring certain items to the floor for discussion. I think it could get there but they will try to block it simply on the grounds that this is an internal matter. That is the usual way of doing it. On the face of it, it is the Polish government which took this action and nobody else outside it.

Our problem is further exacerbated by the fact that we have had so many obvious violations from so many of the South American countries over the years. You can see that by just looking at the list.

Mr. Shymko: You have a lot of evidence--just as much in some other parts of the world, certainly in eastern Europe--of obvious violations. They perhaps have not been documented strictly. My question was whether the structure permits expanding the discussion of these concerns beyond South America, which is so well documented and the concern is well expressed. Some success can be achieved it is hoped. Do I understand from your comments that the way these subcommittees are structured it is almost impossible to have a special committee on the human situation in eastern Europe? According to your comments, it is practically impossible to achieve.

Senator Neiman: I see no reason why we couldn't recommend that. I see no reason at all. We would have to do it at our spring meeting and try to battle it through there. The point I was going to make about the South American countries was we are getting two reactions from them because of the sensitivity. One is that they are beginning to band together. Their perception is that these international organizations are picking on South America as a whole. Therefore, they are beginning to be a little more protective of one another in one sense.

We get two different reactions when we try to suggest we deal with some other country or something like that. They say: "You have been trying to investigate our internal affairs. You have no more right to do theirs." That is what some of them say. Others are very happy to have the emphasis switched to another

part of the world entirely and will go along with it. We are never quite sure what the reaction is going to be from the group.

Mr. Shymko: When you deal with cases of individual parliamentarians and the violation of their human rights, would these be parliamentarians who are alive or were recently alive, if they had been killed by certain regimes? How far do you go back in terms of the victimization of parliamentarians? For example, the president of Czechoslovakia, Benes, was certainly eliminated, the president of Bulgaria was executed, and there was the liquidation of hundreds of parliamentarians when certain regimes were established. Do you deal only with present cases or how far do you go back?

Senator Neiman: We don't go back very far, as you can tell from these. There are a couple of names on this list that literally disappeared during various purges in 1978 or 1979 and we know almost certainly they have been dead for some time. I have said there comes a point when there is no point writing a government another communication on this and saying, "Please give us some information about this," because every bit of information we have would make us believe that person is already dead. It seems to me we are trying to force an admission out of these countries just to satisfy ourselves when we know the country is not going to answer us. If we were to get an answer, it would not be very useful anyway.

3:20 p.m.

We deal, as much as possible, with fairly current matters. Some of these cases of people who have disappeared go back several years. In a committee such as this, we only bring it to an official government to government basis when they have investigated their sources and are sure, beyond a doubt, that their sources are authentic. We are almost too careful in a sense. They take that care while there is a risk or any kind of a possibility of offending or accusing a government of acting improperly with respect to a certain individual.

Mr. Shymko: My last question relates to the comments expressed by Mr. Philip. Is there any way, if we should expand the mandate of this committee, that will deal with concerns of human rights violations, to have a more direct representation at bodies such as the one in which you have been active over the years? There is the Commonwealth Parliament Association to which Ontario, unless I am wrong, has a separate independent delegation.

In 1974 there was an amendment and a change to the constitution of the International Association of French-Speaking Parliamentarians that allowed for independent delegations from Quebec, New Brunswick and Ontario. They have recently been allowed to have an independent delegation within that international body. Would it be reasonable, by referring to such other international bodies of parliamentarians, for the Inter-Parliamentary Union to entertain a motion allowing for independent delegations to be represented from the provinces, in the case of Canada, and other federations and confederations similar to that of our own country?



Senator Neiman: I do not know. With regard to each one of those organizations, they have an international character, whether it is a Commonwealth character, and this one is totally international in character. With that kind of a constitution, we would have to go right back and find out if there are those kinds of channels.

My feeling is that in terms of sheer financial obligation, I doubt that the IPU, as an international body, would be prepared to entertain bringing in other groups simply because of the cost of putting on these conferences, and things like that. Everybody is feeling the budget restrictions these days. They are looking at ways to cut back on the size of delegations. In particular areas, it may well be that if they wanted to come in on some self-financing, certainly--I do not know--with the IPU itself.

This just reminded me, because I received an invitation from the Canadian Human Rights Foundation, which is Canadian in character, and has a board of directors representing every province in Canada. They are here as individuals, and they have an advisory council as well. It seems to me that the Canadian Human Rights Foundation and groups like that would be delighted to have--I do not know whether this is a conference that is coming up and I am invited there as an individual.

I see you are a member of this, Mr. Shymko, on the board--I do not know whether there we could entertain organizations as members and have organizations and try to put more teeth into the Canadian Human Rights Foundation and use it as another organ of pressure.

Mr. Shymko: In the context of state representation or national representation I think it's a completely different framework altogether from this.

Senator Neiman: Yes.

Mr. Shymko: Has there ever been a motion or did anyone ever entertain allowing for the expansion of memberships? According to your comments this has never been done. I just quoted precedents of other parliamentary organizations where this had been done subsequently to motions to amend a constitution. If that is difficult then why not allow the Canadian delegation to allow, perhaps, some provincial representation within the makeup of the Canadian delegation, particularly because we have provinces that have the type of mandate to deal with the concerns we would have, certainly, in Ontario with the expansion of this committee's work?

Would it be possible? Is it structure that you have to have? I think you mentioned six from the House of Commons and two senators--in other words, an eight-person delegation. Does it have to be eight? Could it be 12 or 15?

Senator Neiman: Not at the spring meeting. That's our spring meeting, for instance. In the fall meeting we have 13 or 14 delegates plus some staff.

Mr. Shymko: In other words, the Canadian delegation can

be larger than eight if it includes provincial representation.

Senator Neiman: The problem is that each country contributes to the upkeep, the maintenance, the administration and the ongoing affairs of the Inter-Parliamentary Union. We contribute according to our capability, and every other country has to do the same thing. A limit is put on the number of people who can go, simply because there are not very many countries that can even handle-- Our fall meeting ends up with about 2,000 people, which is getting right out of hand at this point. We don't even have a place where we can accommodate them here in Canada at the moment. I don't think they would entertain any expansion because if they allow us to bring more people they are going to have to allow every other country on a proportional basis to do the same thing.

The alternative to that is cutting down the federal representation to allow a number of people from the provinces, and then you are getting into a kind of numbers game. I don't know how you would deal with it even if it were allowed, and I don't think it is because it is a national thing.

Mr. Shymko: That's all I wanted to ask, Mr. Chairman.

Mr. MacQuarrie: What lobbies do you think would have the most leverage for making known to offending nations, if you will, the feelings of a province in Canada or of Canada itself? Would it be the United Nations?

Senator Neiman: Yes. It is number one at the moment because of its international stature.

Mr. MacQuarrie: If, for instance, the Legislative Assembly of the province of Ontario passed a resolution saying that the Secretary of State for External Affairs be requested to instruct the delegation to the United Nations on behalf of the province of Ontario to make its voice heard against political killings, imprisonment, terror and torture, would that serve any useful purpose?

Senator Neiman: I believe it would. I would like to see. It is perhaps something I could take up with Ambassador Beaulne, Mr. MacQuarrie, and also whether he could not expand this annual meeting he has before he goes to the United Nations meeting in Geneva each January, because at the moment only nongovernmental organizations attend that meeting. I myself go because I serve as a representative of the government in a sense because our parliamentary organization is the only one that has any kind of a committee that deals directly with human rights violations. But it seems to me that would be a very good avenue to get at it and I would like very much to see that meeting expanded to include the provinces. I think it could be on that basis, or they might feel it was better to have a separate meeting.

3:30 p.m.

I know from time to time the ministers have had meetings with the province on that kind of basis about the obligations to



the United Nations, the protocol and the reporting and so on. I do think if you were able to attend and have an input into that, it would be very useful to the government and give you the most direct channel of communication.

Mr. Cooke: I have a supplementary. I did not think we were going to get into supplementaries but I think it follows along with some of the questions Mr. Shymko was asking.

Mr. Shymko was referring to some of the Soviet-bloc countries. Would it be fair to say that we in the western world could have more impact on countries such as El Salvador and some of the other countries in South America you have talked about because of our close economic ties; that we could have much more impact if we put pressure on the United States to change some of its policies, for example helping El Salvador, unless they change some of their policies towards those countries and unless El Salvador changed its policy on human rights; that because of our close links, we have a better chance through government policies towards those countries to change their attitude towards the people and political freedoms than we do with the Soviet countries?

Senator Neiman: Probably in terms of immediate pressure, if we wanted to exercise it, I think we should and could have a greater influence than we would on the Soviet countries. There again, Mr. Shymko may be more aware of this than I am. I think it all comes back to a great extent to the kind of publicity, the kind of open pressure you can get. If you can get the message through to the people of your support or whatever it may be--

Mr. Shymko: --preferred nation status in the Soviet Union in light of the developments in Poland, so you find the contradictions right here too.

Mr. Cooke: But on the other hand, we are giving tens of millions of dollars to El Salvador. The parallel is there. All I am saying is where do we have the greatest chance of success through policies of western countries, either through economic sanctions or sanctions against them for military aid and that type of thing. We do not have the ties with a lot of the Soviet countries to the extent that we have them with El Salvador and some of the other countries.

Senator Neiman: Of course, Canada has no economic ties with El Salvador.

Mr. Cooke: We have economic ties with the United States though, so we can put pressure on the US.

Senator Neiman: Yes, but that's it. Personally, I would like to see us put all sorts of pressure on the United States to reverse its present policy. I do not like it at all. Probably, to use that specific example, Canada itself is the proverbial mouse nibbling at the elephant's toe in trying to apply pressure by itself. But I think Canada can exert a great deal of moral suasion and should, with all the western countries that are concerned to try to persuade the present government of the United States to take a look at its present policy. The more pressure--and not only

just adverse pressure but support as well, to a government to go ahead and do this; the people are behind you; they want you to take a stronger role or a greater role. I think all of that is very important and that is why the more people, the more provincial governments, the more individuals you can involve in the process to make them aware of what is going on, the better it is.

Mr. Cooke: There is no doubt at all that it is more politically popular to go after the Soviet-bloc countries for their human rights violations. I am not condoning them. I agree that no matter where it happens it is something that has to be condemned. However, it seems to be that the pressure has not built on our government to go after Mr. MacGuigan and the federal government to change its policy and be very tough with the United States. It was only because of the reaction in the public that the federal government seems to have changed its mind towards Poland in the last couple of weeks.

Mr. Chairman: I am going to jump in here. We have a couple of more people on the list to speak wishing to ask questions, and the senator has to leave very shortly so I would like to move on. I am going to say right now there will not be any further supplementaries in the hope that we can get the remaining questions on. Mr. Philip?

Mr. Philip: Thank you, Mr. Chairman. When the Canadian delegation comes back, are there specific recommendations? Do you caucus after one of the meetings and then make recommendations to the government concerning what action, if any, should be taken by the Canadian government?

Senator Neiman: When we come back from this committee?

Mr. Philip: Yes.

Senator Neiman: I guess I did not really make myself clear. I do not even get to go to the committee except on a substitute basis if the permanent member happens to be absent or is being changed for some reason or another. So, only once have I gone to the actual committee meetings in Geneva. What happens from there is that they take their recommendations to the spring meeting, to the council of the spring meeting which consists of two representatives of each of the 90 countries, and they ask what they want them to do.

Now, in some cases they will deal with them confidentially, add a bit more pressure, and go back at them again. That correspondence you would not even see. With others they would say, "We have dealt with this long enough." They will go public on it, take it to the General Assembly in the fall and tell them they will.

When we have dealt with them--and that is one of these things that you have here. This is the spring meeting one, the public part of it, that goes forward. When we come back, I send copies of these to our Department of External Affairs and say, "We have been asked again to follow up on this," or "You will see that



there are four new cases from the last time. Would you please follow up on those and find out what you can for us?" We very often get in touch with other organizations. I really do that, I must say, sort of as an individual, as a person on our own Canadian delegation who has been asked to look after the human rights end of it. I am the liaison for the whole group on that.

So that I might get in touch with Amnesty International to find out if they have had any information and try and put all our information together and see what further action we can take or recommend. Before we go to another meeting we usually get a report back from the Department of External Affairs telling us what they have found out or giving us some recommendations or saying what action they have taken as a government.

Mr. Philip: So there is a formal mechanism through the Department of External Affairs of the Canadian government of at least making your concerns known and, through them, of making their concerns known to other countries or the offending countries?

Senator Neiman: Yes.

Mr. Philip: Are there recommendations which would be made in terms of trade and other practices also, or is it purely the Department of External Affairs that becomes involved as a ministry?

Senator Neiman: It is really External Affairs and I have to tell you that I feel that we have not-- This is the sort of problem for which we should have special caucus meetings in our foreign affairs committee to get answers. It has never been done. I feel there has been a real hiatus there where we haven't had sufficient liaison with our department on a little more formalized basis. As to their thinking, their reasoning for this--we have one committee in the Senate and another in the House. I don't think either committee has dealt with this directly head on and it is something that should be done.

3:40 p.m.

Mr. Philip: My experience has been, and it has been the experience also of certain lawyers--I won't mention their names but I can give those things to you--they have suggested to me in trying to get any kind of effect that the Department of External Affairs tends to be bureaucratic and insensitive, much more so than the Department of Employment and Immigration with all the faults and problems that are in that ministry. They say if you want to get quick action and find out something about someone, particularly if it is a relative of a landed immigrant or a Canadian citizen who may be in some way affected, the Ministry of Employment and Immigration gives a more straightforward and honest answer than the Department of External Affairs which gives you the gobbledegook that totalitarian governments like to feed back to you as their official responses. Do you have any comment on that?

Senator Neiman: I suppose External Affairs is so used to talking and writing in diplomatic language, which as you say usually has its own form.

Mr. Philip: It seems to me there are two kinds of recommendations that would be possible by Canadian delegates to a world group like this. One is the kind of recommendation that brings pressure on the offending government. The other type of recommendations are those that either improve our system and make it more democratic or which affects those kinds of policies we would deal with that would affect either the relatives or possibly the persons themselves through the offering of refugee status or other things. Some countries are actually pleased to get rid of somebody who is a nuisance to them.

Provincially, there is the link with such provincial ministries as education--the way in which the children of refugees may be treated or the way in which the school system reacts toward either questioning children regarding their landed immigrant status and you get into all of that business.

What kind of effect can a body like yours have on the internal workings of Canada? That is, do you have any influence in saying, "This country is persecuting its people and these people from Haiti are legitimate political refugees because we have X number of examples of it as distinct from..." The feeling I have is that you can be the worst--Let me put it this way: In my communities, the one I represent, there is the feeling that if you come from Cuba, you can get into the country fairly easily whereas if you happen to come from Argentina or Chile, you have trouble getting into the country and proving that you are a political refugee. I am wondering what kind of influence a body like yours can have in making sure that the government understands and effects its immigration policy in a realistic manner.

Senator Neiman: That question and that concern is totally outside the terms of reference of our committee. I suggest you are getting far beyond even the terms of reference you have here, about talking about political killings, imprisonment, terror and torture. You are into a different area about the definition of a refugee--and what constitutes some kind of terror or oppression that should automatically entitle a person to be considered a refugee. As you probably know, Mr. Axworthy is bound by the United Nations' definition at the moment of what a refugee is. That is not to say that we could not go beyond.

Mr. Philip: But we did go beyond it for the sake of the Cubans, didn't we?

Mr. Chairman: I want to interject. We have only a few minutes left for one further individual who wants to ask a question. I am going to move on to Mr. Mitchell.

Mr. Mitchell: Thank you, Mr. Chairman. I am going to be the devil's advocate here, Senator, but I suggest to you if one reads the motion as put forward there are a great many ways the province can make its voice heard. What I have difficulty with is the fact that even your group, with respect--and it is doing a great deal of work--can make its voice heard but that is its limit.

I realize I am being very pessimistic about the whole thing



but I think you yourself said in so many words that until the United Nations themselves put some rules in that they all agree to abide by, we are whistling in the wind. Certainly, there is going to be some measure of success, but you also pointed out that a certain point is reached where some of these countries begin to get their backs up a little bit. In reading through some of the reports here, their acknowledgement of the committee's communiques to them are in a great many cases almost ignored until one grabs the other one at the United Nations, right in the meeting.

Being the devil's advocate, as they say, I think there are many things Ontario can do, to use the words here, to make their voice heard. Whether making their voice heard accomplishes something I say to you, personally, in my opinion it won't. The only way something will ever be accomplished is if the United Nations themselves, as a group, as a body agree that they are going to respect certain things and that they will enforce all of these things. Am I being overly negative? I do not know, but that is the way I see it.

Senator Neiman: No, Mr. Mitchell, you really aren't. I hate to sound negative myself, and I probably have today; maybe one would simply like to say a little realistic--

Mr. Mitchell: Perhaps that is being realistic.

Senator Neiman: The fact is that you can pass all the resolutions in the world but if you don't put some sanctions in there, if you don't put some teeth in your resolution, then that is all it is. It is words, it is talk. But talk is not bad, and that is a good thing about the IPU. We meet these people from the other countries face to face, time after time, and we say we are going to bring this up again. We do it with the Soviet group; you smile at them, you are polite but you say that is coming up again and you keep going. They are going to try to block you but at least you are having that kind of personal interchange.

My feeling is that I cannot really envision a day when any international group is going to say, "We are passing this definition of torture and we are putting together our international court, and if we find you guilty of torture we are going to sentence you to expulsion" or something. The international group simply will not work that way.

I would love to see a conference put together of all the provinces and the federal government on discussing this whole area of how we could give ourselves more clout; looking at the questions of are our sanctions any good, what kind of publicity should we give, what kind of explanations should we give. I think there is a whole range of questions that could be discussed very usefully between the federal government and all the provincial governments and how they could all work together, how we could best do the job.

I think that kind of input would be very helpful and would give provincial legislatures a real focus. It would give us all a chance to say, "Where can we do the best? How can we help you or how can you help us to try to deal with this matter?" in turn to

give our own federal government the clout, the encouragement, the fortitude to get up there and speak in the United Nations. That is our first and last hope, it really is.

3:50 p.m.

Mr. Mitchell: One final comment, and I guess it's a matter of perception, but it seems to me, not having sat on this committee before, but from what I read in the newspapers, the successes in the field of concerns about human beings in other countries have been where one country has had somebody else to trade off for another person. I am talking particularly about the trades that have been done with the Soviet Union to get people out. Unfortunately, that is one of the ways that does work where we are trading in human bodies. Until the United Nations does, as you so clearly stated, decide it is going to take the bull by the horns and reach unanimity on what is going to happen, I fail to see--

Mr. Chairman: The senator indicated to us before she came that she would have to depart by four o'clock. I have been informed that--

Mr. Philip: That gives her six minutes.

Mr. Chairman:--her car is waiting.

Mr. Philip: I will see to it that she gets to her car by four o'clock if I can ask her one question.

Mr. Chairman: We will leave it up to you, Senator. I don't want to impose on you.

Senator Neiman: That's fine. I have a 5:05 plane; as long as I make that. I am always getting there at the last moment, so as long as I get to the plane.

Mr. Chairman: If that is the case, Mr. Miller is next in line and I think that will be the final question.

Mr. G. I. Miller: Do you have a report that indicates the successes that have been achieved through this process?

Senator Neiman: The special committee of the IPU, Mr. Miller? I don't have one before me. From everything we have done, I would probably be able to put it together. Funnily enough, some of the successes are secret because it is when we put initial pressure on at the confidential level and countries are afraid of these complaints going public that they make a move and release the person involved or do something legally to meet the substance of our complaint. So very often, the IPU as a whole is not aware of the real successes, achieved by the simple initial pressure of getting the people out. We have only become aware of the ones that take a lot more pressure, where we finally have to go public.

I know from taking part in the inner committee, which is all confidential, that there have been a fair number of them, although as I say, not nearly the number I would have liked. We have been



at this since 1977 when the committee was set up. In the spring of 1977 it held its first meetings. So it is a very slow, laborious business. But I know when I was on the committee, we had a former parliamentarian from one of the Asian countries released. He had been in detention for 18 years without trial. He was one of the first cases, I think. Everyone knew he had been in there and we finally got his release.

Mr. G. I. Miller: I think that is the bottom line in what we can achieve in Ontario. If we can report back indicating what has been achieved, I think we gain more support for the overall objective. It has been very depressing to me today to feel there is nothing you can do, that you are really beating your head against a solid wall and not achieving anything and that there is very little we can do as a province to really get our hands on. I think it is a federal matter, really, but if there is something we can contribute I think we would only, maybe through our school system, inform people of what is being done and how difficult it is and maybe make us feel more proud of our own system.

Senator Neiman: There are two different things there. First, I think it would be excellent if there were a federal-provincial conference of legislators on this matter of what we can do, because I know it does sound depressing when you hear of the relatively few successes or you can be aware of the relatively few successes we have. But those are very important to the people who were released. I think that having another level of government made aware, taking part in the process, could be very helpful. I agree with you that we could certainly pass information on through our school system, through any other way, about what Canada is trying to do, because very often, as has been said here, people simply are not aware. It is not the kind of work that grabs headlines, really, because it is so long and so slow.

Mr. Chairman: Senator, I want to thank you very much for appearing before us today. It has been most informative. Thank you again.

Senator Neiman: Thank you very much.

Mr. Chairman: We said this morning that we would have half an hour to look at scheduling and deal with a couple of items that were kind of fuzzy. I had lunch with the clerk and the counsel to discuss the matter that Mr. Shymko brought up. It has had the effect of throwing a curve into all our scheduling, and we want to take a look at that. We feel quite comfortable with delaying the other matters that we discussed until some point farther down the road, perhaps this summer when we get together; there is no urgency attached to any of them. I would like to turn it over to John at this point.

Mr. Bell: Yuri, I have read the material you gave us this morning, and I look at it this way: The resolution and the first order of business speak to a report which, I hope, will have formulated in very specific ways how this assembly can make its voice heard. I think that after we have heard from everybody this week and when we come to review what has gone on before you will see that there are some very valid and specific hows. For example,

should there be a vehicle of this Legislature to function on a continuous and regular basis to keep matters as they relate to this resolution before the assembly, so that things will be discussed or will be publicized on a continuous basis.

4 p.m.

What is raised by this debate, in my view, does not and cannot assist this committee so much in how the voice can be heard as it can perhaps in examples of what the assembly should turn its attention to after the process has been implemented. Also, having read it, the matter of your fundamental concern, or the concern that you specified this morning, the internment issue, has been fairly well addressed by Smith, for example, wherein, if he is to be taken at his word--and I am not an expert in the original 1965 order in council dealing with the War Measures Act--there are now more safeguards in respect of the internment issue than existed before.

For example, there is a five-step process that has to be implemented before internment camps can become a reality, and the fourth step is an act passed by the federal Parliament to declare a certain situation within this country in respect of which internment camps then become appropriate. So while the concern is raised and Mr. Friesen articulates a fairly representative point of view upon first reading of the order in council, Smith does defuse it. What I am also not sure of--I just do not know--is, was there any follow-up from December 17, 1981, as to what Smith represented the order stood for and how the safeguards were to become effective?

What I am really saying is that any consideration of this in the form of witnesses before you really will not help you to answer the resolution as framed by your assembly. It can be used, however, by this committee, for example, in its report as reference as to the type of matter that this assembly can have regard to under the heading of domestic affairs. One of the things if you have, and I am sure you have, reviewed some of the background material and some of the testimony of previous witnesses, is that everybody from Beaulne right down to Amnesty International has said, "Do not disregard the domestic scene."

I will give you another example that was in the paper--was it Saturday in the Globe and Mail?--a front-page article about the Canadian company doing business with Libya. If that is a provincial company--and I do not mean to prejudge anybody, so if anybody reads this record, I am not--for example, if there is a company doing business in Ontario which purchased trucks from the United States and then sold them to Libya and subsequently arranged to recruit and hire mechanics to transfer them to a military purpose, that is a classic area where this assembly can say to ministers involved: "What about it? What are you going to do to investigate? What steps, if any, are you going to take to make sure this does not happen again or to impose any appropriate sanctions?"

I would categorize that example within this. It is one of very many examples. What I would suggest that the committee



consider is to make this part of your material, part of the record of these proceedings, and when you come to deliberate the report, make reference to this as an example of where this assembly, through whatever vehicle you might settle upon or in whatever way you might settle upon, may concern itself with domestic matters.

Mr. MacQuarrie: One important factor, too, dealing with that section of the regulation on internment camps, is the fact that it is applicable only in time of war.

Mr. Shymko: There is a resolution, Mr. Chairman. The War Measures Act certainly indicated that it would not only be a question of times of war but times of peace of well. Certain aspects of that order in council referred to emergency situations in times of peace, not the internment camps.

Mr. MacQuarrie: Internment camps, under the Solicitor General, were to be established only in times of war, as I read the heading of the schedule.

Mr. Shymko: Apprehended insurrection, too, I guess would be qualified, so you have a very nebulous area of the War Measures Act. The October crisis certainly occurred not at a time of war but at a time of peace. I am trying to say that the whole aspect of this and the reason I brought it in here, Mr. Chairman, is it was a concern by the manner in which the order in council went through without parliamentary debate.

The answer was provided by David Smith, but it took someone to find out about this order, to raise it, to press in order to have some clarification. It is the procedure of implementing the order in council. Something in the order of 60 to 80 orders in council pass every month and require only three cabinet ministers to sign these things. It is to bring to the awareness pertinent legislation that has a relationship and a fundamental bearing on civil liberties domestically in this country in the light of the charter of rights.

Second, it involves definitely communication, documentation, between the federal government and the provincial government. As Smith indicates in his answer, in the emergency planning order there is a major aspect, namely a joint development of federal-provincial emergency plans in various regions of Canada.

So the province is definitely involved, and we as members of the Legislative Assembly of this province certainly should be made aware of this, of the implications, and to monitor the further progress with this order in council. If we are to move in the direction of human rights and civil liberties and monitor various aspects of legislatures in this country, it is paramount that this document be taken under consideration.

I do not know at what stage this is now. I hope it will have parliamentary assent, that there will be a parliamentary act to give this the legal aspect so that it does not become a sort of an extra-legal type of measure. I raise it only because of my concern of the way it was handled, the way this had been proceeding and that we should be made aware, because the government of Ontario

and the provincial governments certainly are deeply involved in the emergency planning which will result from this particular order.

Mr. Bell: I guess what I am really saying is the subject matter which you have raised--

Mr. Shymko: Is appropriate?

Mr. Bell: Well, it is probably appropriate to be considered by the vehicle that this Ombudsman committee may recommend that the assembly implement it. That, therefore, puts it one stage down the road, if you will. We have to build the ox cart, if that is part of the mandate you wish, and once that ox cart gets on the road, then we can address those.

Mr. Shymko: What I wanted to add is once we formulate the framework of the extended mandate that we have, I think this should be a key priority, in addition to some of the other concerns, and perhaps would require a separate type of resolution from this committee to be presented to the House as a major issue along with any other aspects we may have.

Mr. Philip: What I hear counsel saying--John, maybe you can correct me if I am wrong--is that the matter that is before us now is to come up with the process or the procedures, but part of the procedures will have to define the scope, and this is one example of the kind of things that would fall within the scope that we would want to clearly define.

When it comes to coming to grips in a very detailed way with it though, there would be nothing preventing this committee from going back with some fairly specific recommendations as to whatever vehicle or process should be involved by this Legislature in dealing with matters of civil liberties and abuses of civil liberties, and then, as the first item on the agenda, or a separate request, asking that once this vehicle is set up this be one of the first matters dealt with. Is that reasonable?

4:10 p.m.

Mr. Bell: I do not have any problem with that. The only problem I see is that if you divert attention to what that resolution is all about--in other words, setting up the process--you may not give due service or attention to that resolution, and I would hate to see anything stand in the way. I agree it is an example of application of process.

Mr. Philip: Why do we not carry on with this schedule?

Mr. MacQuarrie: If we look at the resolution against the background of Senator Neiman's remarks, it would seem that the only mechanism available to us is public opinion, public pressure on an international scale. If it resolves itself into that, fine. It would seem to me that we are playing around in the froth, and that the remaining witnesses might well be excused and we should frame a resolution to the assembly around that sort of testimony.



I just have a feeling of general helplessness here today after hearing the senator.

Mr. Philip: The other witnesses may change your mind.

Mr. Cooke: One of the things the senator said, though, was that perhaps the role of this Legislature or committee or whatever the mechanism is to rally public opinion, and not just on one occasion where we send a resolution to the Legislature--

Mr. MacQuarrie: But looking at the specific wording of the resolution addressed to this committee, "preventing torture, imprisonment, killing," the rest of it, presumably on an international base to make our voice heard, and it seems that the most effective mechanism of doing that that exists at present is through the agency of the United Nations by us dealing through our federal level of government.

Mr. Philip: I heard her say a number of other things. She said, one, that early identification of abuses seemed to save lives, and that is a question that has not been addressed. She said that we still do not know the value of economic sanctions, or whether there are certain types of economic sanctions that work and do not work. That is a question we can surely look at. She said certain countries seem to be more open to persuasion of various kinds than others, and that may be something we may want to look at.

I do not think we should prejudge evidence before we have heard it. There may well be, from some of the other people who are scheduled to come before us, some very constructive, positive ideas. We still have not decided what kind of forum, even if publicity is the only way--what form it takes; what kind of legislative mechanism, if any, is used; whether it is a legislative mechanism, or simply a funding mechanism of some other vehicle. All of those questions we have not even looked at, let alone answered. Some of the people scheduled to come before us may have some insights for us. I hate to prejudge any of it.

Mr. Chairman: I think we have gone too far down the road to simply adopt your recommendation.

Mr. MacQuarrie: Mr. Chairman, I guess I sit here with a sense of frustration and helplessness about what exactly we, within the legislative competence of this assembly, can do, apart from making our concerns known to the federal level of government to introduce to some one or another of the world agencies, the international agencies. To me, we can talk economic sanctions, we can talk some countries being more open than another. This is all on the international level, really a function of one or other of the ministries at the federal level and possibly we could draw some of those things to their attention, but I think the main thing is to get a message to the United Nations.

Mr. Chairman: We are committed to carrying out our mandate and we have a number of people coming before us. If you review the summary provided to us, there are a number of options that are open to us for consideration anyway and at the end of our

deliberations we hope to come up with something a little more optimistic in tone than simply registering our concerns with the United Nations.

In any event, this half hour was set aside simply to resolve what is coming up in the future. I hope we have resolved Mr. Shymko's concerns as to how we are going to approach the matter he brought forward this morning.

Mr. Shymko: I just want to comment to Bob, it is so easy to become frustrated and to give up and to see hopelessness, but if you have one individual who has served either 18 years, as was mentioned here, or saved the life of an individual, the satisfaction of having this Legislative Assembly representing eight and a half million people as having been conducive to that result, it is a satisfaction I would certainly like to share with everybody.

There are frustrations. I talk about the United Nations. I read Richard Johnston's letter outlining or quoting the fact the United Nations had expelled South Africa as one of the reasons we should consider the choice of South Africa on the itinerary of the Ombudsman. But you cannot take just the resolution of the United Nations as a reason for being concerned. You have to look at the apartheid policy because in the next week or so you may have Israel ousted out and apparently there is a resolution pending to get Israel out of the United Nations. I certainly would question that United Nations resolution and I certainly would not take that resolution as a reason that we should break relations with Israel or prevent the Ombudsman from visiting Israel.

There are many resolutions of the United Nations and international bodies that certainly frustrated me and many of us. It does not balance things the way things should be balanced and they are of concern. I am sure they would not be supported by this government. At the same time, there have been precedents of both stated in this Legislative Assembly.

I can only refer to the Afghanistan situation and the boycott of the Olympics. I am sure the resolution in the Ontario Legislature had a major impact on the decision the federal government took later on. There may be situations related to South America or to other parts of the region and we can have an impact on the decision of the federal government which, in turn, we hope may have an impact on the international scene. But I would hesitate to fall into a state of cynical pragmatism or depression and say that things are hopeless internationally, therefore, what will be accomplished--

Mr. MacQuarrie: No one was suggesting for a moment that things were hopeless internationally. No one suggested that action on the part of the Legislature would not possibly elicit some action from the federal authorities, one way or another. All I say is let us get directly to the point. We are a group in a dark room all looking for a light switch. Somehow or other we have to come to grips with it.

After hearing Senator Neiman, I feel the best way of coming



to grips with it is quite simple, quite direct and very much to the point. Mind you, if the committee has judged otherwise, the chairman has ruled otherwise, I don't propose to make any issue out of it.

Mr. Chairman: Mr. Shymko, we didn't get it clear from you in terms of what you brought forward this morning. Are you in agreement with what our counsel is recommending, the approach we will take as the committee?

Mr. Shymko: The understanding is that we should enclose this as part of the documentation along with the rest of this. I agree with you, we must establish a framework of some relationship between this committee and the Legislative Assembly before moving any resolution, no doubt about it. I simply would like to have this particular document, once that framework is established, presented.

4:20 p.m.

If we don't come to a conclusion, let's say we do not resolve how this committee will operate on February 17, I still feel that perhaps we should look at this particular order in council, and I hope communicate this concern either as a committee or individually. I know that if some of us feel strongly about it, since the government of Ontario is involved in the eventual procedural aspect of implementing that order in council at times of emergency, I can raise it or anybody can get up and pose some questions to the government as to whether it has been informed of this, whether there are any documents, whether there have been communications between it and the federal government because of our involvement eventually.

We could do it individually, but I think a united expression of concern from this committee, even though we do not have a framework established--I would have hoped we would have proceeded at least with some kind of a recommendation of concern regarding this particular aspect, that's all.

Mr. Treleaven: I would like to carry on from where the two previous speakers, Mr. Shymko and Mr. MacQuarrie, left off. I think perhaps Mr. MacQuarrie is afraid of staying in that dark room for the entire three days in case no one in the room ever does find the light, and we leave here and another 12 people come in next summer into the same dark room and search around. Mr. Shymko perhaps feels the same.

It may be better to come up with a less than perfect answer or recommendation or report to the Legislature than with nothing at all, and then, if people feel it is less than perfect, the House has the authority to invest in this committee further investigation into the same topic or an allied topic. But at least give them something. It is the third go-round at the same topic. I think the frustration perhaps that Mr. MacQuarrie was referring to was the frustration of sitting for three days and never finding the switch on the wall.

Interjections.

Mr. G. I. Miller: Mr. Chairman, I don't see that this is a third go-round, is it? It is more like a second go-round, and I think we can come up with a final--I agree with what the government members are saying, that we do not want to waste our time. I certainly do not want to sit in a dark room four or five days, but we have to hear this thing out, I believe, and come up with a recommendation and that's it. I agree with what you are trying to achieve, but I don't think we have been in a dark room and I don't think we have been dealing with it that long. It is going to come to a finality, once we get the input.

Mr. Treleaven: Mr. Chairman, through you to Mr. Miller: I understand, from Mr. White's summary, that it came up in September 1980 and January 1981. I understood this is the third go-round for this. I defer to the people who have been on this committee before.

Mr. Philip: But the product before you is the result of that go-round and we are now at a point where we can come up with some specific recommendations.

Mr. Treleaven: Yes, but, Mr. Chairman, when I brought up this morning the fact that I wished to come to a conclusion, maybe naively, it was suggested it was not necessary that we come to any conclusion in these three days. The inference was that we were going to stay in the darkness and perhaps that was desirable, and I think Mr. MacQuarrie and Mr. Shymko agree with me that it is undesirable to stay in the dark. At least the members in this room wish to seek the light.

Mr. Shymko: Right.

Mr. Chairman: Very commendable. I think there is no pressure upon us to make a recommendation to the assembly this time around, but that it is the desire of this committee to come up with a recommendation, and I am pretty optimistic that we will.

The committee adjourned at 4:24 p.m.





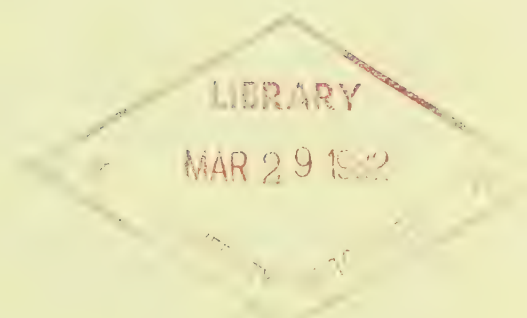
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SELECT COMMITTEE ON THE OMBUDSMAN

HUMAN RIGHTS

WEDNESDAY, FEBRUARY 10, 1982

Morning sitting





SELECT COMMITTEE ON THE OMBUDSMAN

CHAIRMAN: Runciman, R. W. (Leeds PC)  
Boudria, D. (Prescott-Russell L)  
Cooke, D. S. (Windsor-Riverside NDP)  
Gordon, J. K. (Sudbury PC)  
MacQuarrie, R. W. (Carleton East PC)  
Miller, G. I. (Haldimand-Norfolk L)  
Mitchell, R. C. (Carleton PC)  
Philip, E. T. (Etobicoke NDP)  
Piché, R. L. (Cochrane North PC)  
Shymko, Y. R. (High Park-Swansea PC)  
Treleaven, R. L. (Oxford PC)  
Van Horne, R. G. (London North L)

Clerk: White, G.

Consultant: Bell, J., Counsel to the Committee

Witness:

Flis, J., MP for Parkdale-High Park; Chairman, Canadian  
Parliamentary Helsinki Group

LEGISLATURE OF ONTARIO

SELECT COMMITTEE ON THE OMBUDSMAN

Wednesday, February 10, 1982

The committee met at 10:09 a.m. in room No. 151.

HUMAN RIGHTS  
(continued)

Mr. Chairman: I call the committee to order. Our witness this morning is Mr. Jesse Flis, who is a member of Parliament. He is also the chairman of the Canadian Parliamentary Helsinki Group. You have all received a backgrounder, which is numbered 10 in your book, on the purposes of the group.

Mr. Flis, we want to welcome you here. Thank you for taking time out to appear before us. I will turn the floor over to you.

Mr. Flis: Thank you for inviting me to be here this morning. It gave me an opportunity to see my family mid-week instead of just on weekends. I have a 12:05 p.m. flight, so if I am rushing that is the reason. If I get away here by 11 that should give me plenty of time.

I was very pleased to hear that there is a counterpart here at the provincial level of something that we have in Ottawa. I am not aware of other provinces having a similar select committee, one such as yours. That is something we are going to look into; this might be the beginning of some sort of umbrella network for Canada. I hope this morning's meeting will be sort of a learning meeting where you will learn from me what we are doing in Ottawa and I can learn from you what your goals are here.

Maybe I could tell you about what is happening in the standing committee of external affairs and national defence. I think some of your goals will dovetail into that committee also, not just the Canadian Parliamentary Helsinki Group.

The external affairs committee is now hearing witnesses on disarmament and security. They are holding meetings from 9:30 until 12 and then, right after question period, from 3:30 until six and after the dinner hour, from eight to 10. It is hearing witnesses from the United Nations, from our defence staff and from academics, on just what should be Canada's role as far as having some impact on disarmament and security. I think you might be looking out for the final findings that are reported from that group.

The external affairs committee also has struck a subcommittee on Latin American and Caribbean relations to determine what should be Canada's role with the Latin American and the Caribbean countries. You have probably been reading in the media where that subcommittee has travelled through Latin America, including Cuba, and has just returned and is giving its finding.

That subcommittee is also hearing witnesses who are coming forth with such stories as how can the US condemn martial law in



Poland and at the same time be sending artillery and what have you to El Salvador, propping up military rule there. Yet here is Canada, a NATO ally and a close ally of the US: what is our role in this?

I know one of your concerns is the torturing and the killings that are going on around the world. I think that the subcommittee on Latin America and the Caribbean would be of great interest to you people. You may even wish to appear before that subcommittee. The chairman is Mr. Maurice Dupras. As I said, we are in the midst of holding hearings right now, and it is going from 9:30 a.m. until 10 at night, practically every day

The Helsinki parliamentary group, of which I am chairman, is actually quite an informal group. It is a group that was chaired by Charles Caccia before me. I took over the chairmanship in November. We call meetings and any interested senators and members from all parties are invited to attend.

On February 4, for example, we asked Murray Fairweather to appear before us to give us an update on the Helsinki conference, the European security conference which is going on in Madrid right now, and he did. He suggested that Canada's position should be to resume the talks now, which they have done. Our minister, Hon. Mr. MacGuigan, has just spoken--and you have heard it spoken quite strongly--on the Polish situation, but because the east European countries did not want the Polish crisis brought up at those talks, Canada's position probably will be to open the talks, give our condemnation of the martial takeover in Poland and then break until about fall.

The last thing we want is for the talks to break up permanently. These talks are very important to our European allies and if we pulled out--some Canadians are recommending that since Poland and the Soviet Union are not living up to the principles of the Final Act of Helsinki we should pull out--we would lose many friends among our European allies. At all costs we should make sure that those talks continue. They are continuing now and I do not know whether they will break up and then come back in the fall, or whether they will continue.

Our next plan of action is, if the talks do break up, we want to invite Ambassador Louis Rogers, who is the Canadian spokesman at those talks, to appear before our committee. Now that we have this liaison with your committee, any time we have such a person as Murray Fairweather or Louis Rogers appearing before our committee, there is an invitation to someone from your committee to come and sit in and then report back to this group and maybe we could strike up this kind of liaison.

I mention that this Helsinki parliamentary group is a very informal group. I personally would like to see it more formalized. I would like to see it as probably a subcommittee of the external affairs and national defence, which would give it a little more clout, put more teeth into it. This is something we will be discussing with the Secretary of State for External Affairs, Mr. MacGuigan.

We have formalized it a bit this year over last year in that we have a steering committee now. On the steering committee is Allan Lawrence, representing the Progressive Conservatives; Pauline Jewett, representing the New Democratic Party; Senator Paul Yuzyk, representing the Senate; and David Berger and myself, representing the government side. So the chairman and that steering committee is really the makeup of the whole Helsinki parliamentary group. When we hold meetings they are open to any interested senators, and members from all parties.

That is our immediate plan of action. The most important thing that our group did was to prepare a Canadian viewpoint for the Madrid talks in 1980. I think you have some literature already on that. If you do not, I will leave copies of this report, Conference on Security and Co-operation in Europe, in preparation for the Madrid conference.

What we did was call in witnesses from across Canada, from many of the ethnocultural groups, academics, people from business, you name them, because one thing we did stress this time around was that we should keep emphasizing the human rights, but at the same time we should keep doors open for trade. And that is whether we were talking with the Helsinki countries, or whether we were talking with the Latin American countries. That is a new element that is creeping in.

We have received over 100 papers, had something like 72 witnesses, et cetera, it is all in this report; as I say I will leave a few copies here--make more copies to give to the members.

What happened there though was that the Helsinki parliamentary group was struck as a subcommittee of the external affairs committee. Then it had a reference and it could hold witnesses, the expenses were covered, and so on. I can see it continuing to operate in the same way. Should a need arise where this Helsinki parliamentary group will want to monitor the human rights issues, again, we can ask for a reference under the external affairs and national defence standing parliamentary committee, and continue our work.

That is about all I have to say, Mr. Chairman. I am open to any questions, comments, suggestions.

Mr. Bell: I wonder if I could get more of an overview. The article that the committee has is taken from the Canadian Parliamentary Review. It is Silverstone's winter 1980-81 review of your group and what it has done historically. There is a reference--and I use this as an example of what your function has been, and probably is intended to be in the future--to a difference of opinion that flowed from your group's participation in or observation of the Belgrade review conference work, and there is reference to a disagreement of style between how your group perceives the Canadian representatives ought to have negotiated or presented themselves at that group versus how they actually did.

10:20 a.m.



I think the words Silverstone uses are a "conciliatory" versus a "strident" approach. I am not asking you to comment on that. The role your group has undertaken and pursued is really one of a monitoring service and in an advisory capacity to the formal mechanism and the formal representatives of Canada as represented by the Department of External Affairs, for example. Is that correct?

Mr. Flis: Yes, I think you put your finger right on it. I don't think the Helsinki parliamentary group went through the same process, not with the same intensity, as it did for the Madrid conference. Before our minister spoke at the conference, we had this document all ready, so he was able to perceive what is the Canadian perception and what should be the Canadian stand.

Again, it is in an advisory capacity. There is nothing compelling the minister to follow this line.

Mr. Bell: It is a fascinating concept. I won't ask you to comment on how you were initially or are now viewed by certain public servants in Ottawa and in External Affairs. Can you speak to the effectiveness of your group in respect of External Affairs policy or procedures since you became organized and have so participated in these functions?

Mr. Flis: Yes. I forgot one more group and that is the Polish Emergency Committee of Canadian Parliamentarians that we set up. If it weren't for the Polish Emergency Committee of Canadian Parliamentarians, I think the Helsinki group would have been the spokesmen on the Polish crisis with Axworthy on immigration, with MacGuigan on martial law, et cetera. Because the Polish emergency committee was set up, it was the lobby group on the government.

For example, we did put pressure on the government to interpret the regulations in such a way that would allow more Polish people to come as permanent residents to Canada. Those who found themselves outside of Poland could apply for a one-year work permit. We were pushing for matching funds, for example. The private sector has raised \$1 million, the government should match that dollar for dollar as it did in the Italian earthquake case, the Portugal case, et cetera.

This is how the Canadian Polish Congress got \$100,000 to help send food and medicines to Poland. It got the \$500,000 for the International Red Cross. Of course, the grain sales were in place. So there is that kind of lobbying pressure that this all party group would have on the government. But I think I must agree with you, Mr. Bell, that I don't think we are as effective as we would be if we were a more formalized group.

Mr. Bell: Is that why you have asked or intend to ask the minister to formalize your group, for effectiveness?

Mr. Flis: Yes. And there have been proposals made before I became chairman even. One approach was that it might become a subcommittee of external affairs. But, as I say, that is just in the discussion stages right now. Actually one of the members of

your own committee, Mr. Yuri Shymko, was quite active on the Helsinki parliamentary group.

Mr. Bell: I understand he is known to you.

Mr. Flis: Yes, very well.

Mr. Bell: Mr. Flis, one of the matters this committee is interested in viewing or considering is whether and to what extent there is a role that can be or ought to be played by members of this assembly, individually and/or collectively. In the context of your group, do you see such a role as possible either in the form of actual direct membership or as a role of association in some way?

Mr. Flis: Yes, I think I see a very strong role, but before saying that, I would like maybe to caution the members of this committee that they do not get into areas that are not under the committee's jurisdiction or the jurisdiction of the Ontario Legislature. We have heard municipal politicians and provincial politicians getting involved in issues that really are none of their damned business. They are the concern of the federal government, under the jurisdiction of the federal government, and I do not believe the municipal politicians or provincial politicians should be getting into those jurisdictions, which are strictly a federal matter.

But I think there are channels for input from a committee such as yours directly to the the Secretary of State for External Affairs and the Minister of National Defence. That is one route. I think any recommendations you have, views you feel are Canadian, should be made directly to the Secretary of State for External Affairs. They could also be made to the chairman of the parliamentary standing committee on external affairs and national defence, the chairman being Maurice Dupras.

Failing that, if it is a concern you have about El Salvador or Haiti or Guatemala, you could make representations to the chairman of that subcommittee, Mr. Dupras. If your concerns have anything to do with the Helsinki conference, human rights in the European countries of the 33 signatories plus US and Canada, your committee could direct those concerns directly to our committee, the Helsinki parliamentary group.

I think that would give us strength because if each province would do what you are doing and if we could collect all this, it would give us a lot more strength when we are approaching the Secretary of State for External Affairs, to have him raise a motion in the House under 43 or even ask a question in the House.

So I hope that out of this morning's meeting there will develop a close liaison with your group and, by all means, I think you should make your voices heard very strongly, but through the appropriate channels, not as some politicians have been doing, making end runs and making their concerns known directly.

Mr. Mitchell: Mr. Flis, again, I am going to be somewhat negative. Yesterday we heard from Senator Neiman, and I got out of



our discussions with her yesterday the same as I am getting out of the comments you are making here today. I will reiterate what I said yesterday--based on the task that has been given us, if I may read it: "with a view to reporting to this assembly on ways in which this assembly may act to make its voice heard against political killings, imprisonment, terror and torture." I see no difficulty in us making our voice heard--that is one thing--but I think what is implicit in the motion that was before our Legislature is that not only was it to make our voice heard, but really to be able to do something about it.

In all honesty, what I got out of the discussions yesterday with Senator Neiman and what I am feeling through your comments today--and I appreciate the point you are making about us working, perhaps attending your committee hearings and so on--was that other than speaking out about these things, there is really nothing we as a committee can do that is going to stop those killings and so on. I gathered from what Senator Neiman said yesterday, until the United Nations decides to do the job I suppose we all individually expect it should be doing and stops playing its petty little intergovernmental politics and finally takes the bull by the horns and says, "We are going to, among ourselves, absolutely ban and prohibit and do everything within our power to ensure it does not happen," until it does that, we are whistling in the wind. I would appreciate your comments.

Mr. Flis: If each province goes its own way, I think you are whistling in the wind. If each NATO country goes its own way, I think we are whistling in the wind. This is why I think the provinces should have a very strong, united stand with the federal government, and all of our allies should take a very strong stand, because even President Reagan is very sensitive to world opinion.

We had--

10:30 a.m.

Mr. Mitchell: Let me just interject. I can accept all of that. The difficulty I have--and I come back to it--is that the fact of the matter is that there is one global body, which appears to be unable to get together to come to grips with this situation and take a common approach. That's where my hangup is. If they are the overall responsible body it is one thing--

As I say, you are pointing out channels, and I do not dispute that at all. You are pointing out channels where, as a unified group, we can make our concerns known through the Secretary of State for External Affairs, through your committee or whatever. But until somebody is prepared to act, somebody over whom we have no control, all of our pontification on what is happening--

All of us abhor what is happening. But, as I said yesterday to Senator Neiman, it seems to me we are trading in flesh. We do accomplish some things where we have a body to trade for a body, as has happened in certain actions between the Soviet Union and others. So I do not dispute what you are saying, but I still have that overriding question. It's one thing to be heard, but how is the action created?

Mr. Flis: The action has to be through the United Nations, but the United Nations, in my opinion, is getting weaker instead of stronger. Ambassador Robinson spoke before the Canada-United States Parliamentary Association just last night. One of the things he said, which shocked a lot of us but was quite well known, is that the United States is at the point where it is ready to pull away some of its funding of the United Nations, which would weaken it even more.

So you are right, Mr. Mitchell; unless a world body has the teeth and the clout to do something, each one of us is very weak. But again I stress that, even if the UN can't do anything, world opinion is very powerful. That's where the unity and strength will have to be.

Mr. Mitchell: Yes. Just by way of a comment, it seems to me that we have all been reading in the papers in recent months and recent weeks, first, the situation of, I believe, a Swedish gentleman--I cannot remember his name--who is credited with saving the lives of so many people of the Jewish faith during the world war, who has disappeared. He apparently disappeared into prison in the Soviet Union and no one can get any information there even as to whether he is still alive.

We also have the current situation in the Soviet Union where the United States is harbouring within the embassy people who belong to the Jehovah's Witness faith. In recent weeks they have been in the press because of the hunger strike they are on. In fact, I believe it has been some seven years, or some lengthy time, that they have been there. A lot of people have been putting in a lot of press about this situation, but nobody is winning.

Mr. Flis: No.

Mr. Mitchell: I guess those are the frustrations. I am echoing a frustration, I guess. We are damned lucky to be in this country where we can speak our minds and do pretty well most things we wish to do. But it makes one feel pretty damned helpless when one realizes that there is a group of people in the United Nations--and you say yourself it appears to be getting weaker; I think that's a feeling a lot of us have had--and it comes down to the fact of playing their own particular game of politics. It just makes our task here seem a very onerous one indeed.

Mr. Flis: I share your frustrations, I guess, because we hear this daily and weekly in Ottawa. What do you do about it? What do you do with a country like the Soviet Union that signs every treaty, agrees to every negotiating talk and what have you but doesn't live up to them? How do you deal with people like that? It's a frustrating position to be in.

Mr. Mitchell: Thank you, Mr. Chairman.

Mr. Philip: I would like to follow up on your comments about certain politicians at certain levels of government interfering in what is not their jurisdiction. Senator Neiman yesterday pointed out to us that one of the things that saves peoples' lives is early public warning of what is happening and



yet my experience with the External Affairs department is that it's much slower in responding than the Employment and Immigration department--both of them have offices in these countries--and that if you wait for External Affairs to do anything the person is probably going to be dead three years before you get your next memo back.

Would you not agree that resolutions passed by municipal councils, by university groups and by provincial Legislatures have some influence, if not on the Soviet blocs at least on some of the Latin American countries?

Mr. Flis: There are two philosophies on that and both philosophies are practised. One philosophy is that if you want to pressure the Soviets to release a Ukrainian dissident or a Soviet dissident you put on world pressure. That is one route that has been followed. The answer that people give us to that is: "That's like putting the final nail in the coffin, because look at the number of cases where world pressure has been put on and the person is still sitting in prison in a dissident camp."

I am not saying whether I agree with that or not, but I am saying that is one view very strongly expressed. They can document case after case after case where world pressure was put on and the person is still sitting in a Soviet detention camp or in Siberia or what have you.

The other philosophy is that if you put on world pressure very early in the game this does embarrass the government and the government will release the person much faster. I think what we have to do is look at each case very carefully and see which route will give us faster action.

I can't agree with you, Mr. Philip, that External Affairs is very slow in responding. You have to be careful of what it is you want. If it's an immigration case then you go through the Department of Employment and Immigration; if it is an External Affairs case where a person cannot get a passport to leave the country and you want External Affairs to intervene then it does become an External Affairs case.

Mr. Philip: I'm talking about just finding out where the person is.

Mr. Flis: It's not External Affairs that is holding up the process. If that country, be it Poland or the Soviet Union, will not give the person a passport to leave the country our External Affairs department puts pressure on, but you still can't go out and say, "Look, you've got to do this."

Mr. Philip: I guess what I am talking about is the very simple matter of trying to find out whether or not the person is in jail, whether he is alive and so forth. I found that the immigration department can usually--or in the case of Latin America the Catholic church sources can usually give me a lot faster information than External Affairs. And, indeed, even though I have been very critical of the immigration department with respect to refugees in Latin America in particular, they seem more human and more sensitive than External Affairs.

There may be all kinds of reasons for that. But surely it makes some sense that if I as a practising politician find out that a relative of one of my constituents is in jail for political reasons then the faster I go public with it and the faster an organization, or a body or maybe a committee of this Legislature responds to that, or a city council, then it at least means that certain governments down there such as Argentina will be a little bit reluctant to rub him out.

Mr. Flis: It depends on the country you are talking about. Certain countries will respond to public pressure, yes. Other countries will do the reverse to show you, "Who are they to tell us what to do?"

Mr. Philip: And these people--

Mr. Flis: You have to be very careful about which country you are dealing with.

Mr. Philip: You are saying, then, that in certain countries public pressure from other countries may in fact endanger the lives of the people who are being held?

10:40 a.m.

Mr. Flis: That is one philosophy expressed by a lot of Canadians.

Mr. Philip: Supposing this Legislature set up a committee to monitor things like that--because some of us have a good many constituents whose relatives are affected by this--then surely it would make sense to put one type of pressure on one country if it works and different types of pressure on another. Do you people have any research that can be of assistance to us in that regard so that we take whatever action is helpful to the person who happens to be imprisoned?

Mr. Flis: We do not have any research that I know of. I can check with External Affairs and get back to you. But if you can delve into that topic I think it is not only a fascinating one but it would make quite a contribution probably to helping getting people out of certain countries and reuniting certain families.

Mr. Philip: Some of the decisions that are taken by the federal authorities particularly concerning the way in which refugees are treated have a very direct influence on our provincial policies and on our day-to-day operations. I am thinking particularly of immigration. We have had the situation where one of our school boards has said it is not the role of the school board to report on whether or not a child is the son or daughter of a legally landed immigrant.

In parts of the city there are a number of illegal immigrants--people who are afraid to go back, people to whom the External Affairs department has not seen fit to grant political refugee status--or maybe they have not applied. But there are people who somehow feel they are endangered or say they are endangered. One school board says, "It is not our job to do the



police investigation; we will accept any child without questions." Another school board says, "We will co-operate with the federal authorities," and so forth.

That has a direct implication to us in terms of our social services, in terms of whether or not there are kids running loose on the streets, or whether their parents are able to work and therefore meet their needs, or whether they have to stay home with kids whom they are afraid to send to school, and so forth.

What kind of mechanism do you see would help us deal with the provincial implications of some of the federal policies? I refer not only to External Affairs but also to Immigration, particularly in relation to refugee problems.

Mr. Flis: Education in Canada, in every province, is paid for by Canadian taxpayers for Canadians and children of Canadians. So anyone who can show that they have landed immigrant status, permanent residence status, has a right to attend the public school system or separate school system in Canada. If they cannot show that the schools have the right to refuse admittance.

It is a Catch-22 situation, because the principal tells the family, "Show me something from Immigration that you are going to be a landed immigrant." They go to Immigration and Immigration says: "No, we cannot give you that because you are not a landed immigrant yet. Your case is being heard. Let the school accept you on that ground." The school says, "Sorry, we cannot, until we get some paper from Immigration to show that they will be a landed immigrant case." Immigration sort of refuses to give this. So you are in this Catch-22 situation.

I cannot verify these figures but we are told that there are thousands of children within the city of Toronto of parents who are here illegally and are afraid to attend schools. They can be two or three years in the homes, not attending schools, not getting an education and growing up illiterate. I am very concerned about these people.

I think the simplest thing this committee can do is pressure your Minister of Education (Miss Stephenson) to send a directive to every school board in Ontario, since it is provincial jurisdiction, that any child who is of school age should be accepted into our school system. It is as simple as that. Surely a country with our wealth and our size should be able to do this while their case is pending--and their case could be pending for two years.

For example, we have so many hearings--so many cases going through inquiry boards and so on--that it could be a two-year stint before the child is accepted as a permanent resident or not. This committee could do something here maybe by pressuring your Minister of Education to send some directive to all the boards of education. Because you are right, Mr. Philip, one board of education will accept this child, another board will not. I do not think that is fair. It should be uniform.

Mr. Shymko: I would like to comment, perhaps rather bluntly, on some of the concerns I have in regard to the human

rights aspect as they relate to federal jurisdiction. Having been a former member of the Canadian Parliamentary Helsinki Group I did experience these frustrations for a brief time in Ottawa.

My first question to Mr. Flis is about a matter that has been discussed in the past and I would like to know whether it is still on the agenda--namely, the nature of your group as compared to what we are trying to do here in Ontario.

You may be aware that we are a select committee, appointed by the House, reporting to the House, whose resolutions have an impact in the Legislative Assembly of this province. There is a difference between a select or standing committee and the clout they exercise compared to a group of interested parliamentarians. Individually the parliamentarians are deeply concerned, no doubt--as you are, as the members of the Helsinki group are--about human rights violations. This is stated in the Helsinki accords signed on European security and co-operation back in 1973, I believe.

But yours is a group of interested parliamentarians. No matter what genuine interest you may have you are not appointed by the House; you are not reporting to the House; your deliberations are not recorded in Hansard.

How serious is the attitude of the government, if human rights are such a concern, if it does not at least look at different options? It could set up a special committee--a joint committee of the Senate and the House of Commons or a select committee--something that would give it at least the responsibility of reporting to the House of Commons or the Senate and recording the witnesses' testimony presented before it. If that were the done it would give me the opinion that there is a more serious approach to the work of that particular group dealing with human rights.

I, personally, would object, in the framework of our Legislative Assembly of Ontario, if we were to be asked simply to deal as an interested group of individual parliamentarians. That would not give the weight that we could carry as a select committee. This is why the resolution before us, in trying to expand the mandate of the select committee of the Ombudsman, certainly gives more weight, in terms of the effectiveness of our concerns, as they would be reported to the House and a resolution that would be forthcoming from the House.

But we are a province. These concerns basically are still in the area of federal jurisdiction--in External Affairs. It would make more sense to me if something similar to what we are trying to do here in Ontario were discussed and implemented somewhere at the federal level.

This was raised in the past. I would like to ask you whether or not there has been any resolution, any recommendation, any pressure, by members of Parliament and senators to change the nature of the Canadian Parliamentary Helsinki Group from a mere interested group of parliamentarians, whose personal commitment and interest is human rights, to something that carries a little more weight.



Mr. Flis: For the sake of saving time, if Mr. Shymko reads the transcript of my opening remarks he will have the answers to his questions there and maybe we could proceed to the next question.

Mr. Chairman: There is quite a bit of detail there on what the Helsinki group is trying to achieve in that direction.

Mr. Shymko: In other words, there is an attempt being made?

Mr. Flis: Read the transcript. Actually, my answer was in direct--

Mr. Shymko: All right, very good, my apologies, I should have listened better.

10:50 a.m.

The second question I have is related to the remarks you made to Mr. Philip. I understand that sometimes in naming individuals we may be endangering their lives. Certainly I personally never have agreed with this precept. I think publicizing the name of an individual who has been arrested or who is persecuted never endangers him but certainly provides the public interest internationally to save him. Most of these individuals have nothing to lose but something to gain from the publicity.

The question of interfering in the internal affairs of the state is often quoted as another reason why we should not raise these names in an international forum. I refer to the conference in Belgrade--and I just wanted to know whether there has been a change in Madrid--where there were widely documented reports from the Canadian Parliamentary Helsinki Group about the arrested members of the Helsinki monitoring groups in the Soviet Union, for example. I refer to the Moscow group, of which Mr. Scharansky certainly is a classic example of one of the leading individuals, as is Mr. Sakharov; the Kiev group, comprising close to 35 individuals; a group in Lithuania; and a group in Georgia.

What happened in Belgrade was that the Canadian delegation refused to support a motion, presented by the Americans, to condemn the arrest of the members of these monitoring groups on the basis that this would mean interference in the internal affairs of the state.

I wonder whether that position is still here, whether we are pursuing the whole question of the arrested members of these monitoring groups officially, or whether the position of the Canadian delegation at the Helsinki Accords Review Conference in Madrid had raised that issue, had named the individuals and had demanded the release of them officially.

Mr. Flis: The position that Canada took in Madrid was that it would not name individual names in plenary; that individual dissident cases would be handled in what we call corridor meetings, going to the country directly and trying to

negotiate in corridor meetings about the release of individuals. That was the approach taken.

Mr. Shymko: In other words, it has not changed from the situation in Belgrade.

Mr. Flis: No, it has changed.

To give you an example of how this worked, I was in Madrid for the first two weeks; I took with me the Kolev case, which is probably well known to you people here. I approached the Bulgarian delegates, saying: "I have this case. Will you look into it?" Initially, they said: "No. We have proper channels for this. This is not to be brought up here." I reminded them, "You probably notice that Canada has not raised individual names at this conference." The ambassador told his delegate: "Oh, that's right. Okay." Lo and behold, the Kolev case is now on its way to family reunification, where Kolev's father has been given permission to leave Bulgaria. And it is not easy dealing with that country.

That is a firsthand experience I had where the corridor meeting approach worked. There was world pressure, Amnesty International, the UN, so many Congressmen, you name it; the whole world was involved in that case, and yet the Bulgarians would not release this ailing father, who was approaching 70 and was on his deathbed because of a heart problem and other conditions. But the latest word now is that he will be allowed to come to Canada and join his son.

Mr. Shymko: As I say, the Kolev case has been around for more than 10 years with the government of Bulgaria. I certainly do not wish to diminish in any way your intervention personally in the corridors of power or behind the scenes, but the case has been around and I am sure that through Amnesty International, the public outcry and the naming of the individual in international forums were factors involved and not only personal intervention.

Mr. Flis: Up until a year ago, Mr. Shymko, it just didn't have any impact. Again, I am not agreeing with one philosophy or the other. I gave Mr. Philip the two philosophies that many Canadians subscribe to. I am not saying I subscribe to one or the other.

Mr. Shymko: I think it may be a concern. There would be no sense in a committee such as ours going into individual cases if, in listening to witnesses and getting documentation, we were hesitant in naming individuals in official resolutions from the Legislative Assembly of Ontario. This will probably have to be a decision reached by this committee. I still feel that essentially there has been no change.

The fact is that some other delegations--and I refer basically to the United States and some other countries that supported them--have no hesitation in naming individuals, have no hesitation in publicly raising their concern. I still feel the Canadian position should be reviewed as to its effectiveness. It is debatable, it is controversial, and I think we should continue that debate rather than stop it.



Mr. Flis: That's right; it is debatable. And, again, if you look at the names the United States named at this conference, they are still sitting there.

Mr. Shymko: My final question refers obviously to an issue that is currently pending at the Madrid conference where the Helsinki accords are being quoted constantly as having reference, and that is the crisis in Poland. We heard yesterday the concerns of a number of members of this committee about the use of sanctions, about the use of international trade and some other arrangements in which even this province is indirectly involved, as a form of pressure to alleviate the plight of human rights and the plight of individuals, and entire nations in the case of Poland, from the state they find themselves in at present.

Poland apparently has been raised as an issue at the Madrid conference and will continue to be raised today and tomorrow as the conference continues. There is still a position federally that it is a matter of internal affairs--it is a position that is probably shared by Tom Wells and perhaps by the government in Ontario--that the situation in Poland is purely an internal matter that has to be resolved internally and that raising this issue at international forums would be interference in the internal affairs of a state. As we know, that is certainly not the view of a number of delegations in Madrid.

I would like to ask you whether the federal position is still one of interpreting the crisis in Poland as merely internal. The Helsinki accords, in my opinion, are still binding internally on states that have been signatories of the accord or have certain responsibilities under basket three, as I understand it. So you cannot dismiss this matter as purely internal and say that the accords do not affect the situation in Poland.

I wonder whether the federal position--and you would know this as a member of the Helsinki group--is still one of viewing the situation in Poland as purely internal with no interference and not being bound by the Helsinki accords.

Mr. Flis: The Canadian position has been that the Polish crisis is an internal matter and that it should be solved by the Poles themselves.

We have received a lot of documented information--I don't know whether it is documented, but it is good information from good sources--that there definitely has been Soviet intervention and Soviet plotting behind the whole military takeover of Poland. So Canada is no longer saying that there hasn't been Soviet influence.

We are saying outright--and Mr. MacGuigan has said this at the Madrid conference; he took a very strong position, supporting Mr. Haig--"Yes, we are very clear that there has been Soviet influence. We are demanding that the martial law be lifted in Poland, we are demanding that the prisoners be released and we are demanding that the three sides get back to the negotiating table; that is, the government, the church and Solidarity." That position has been stated very clearly.

I arranged a meeting with Prime Minister Trudeau and the presidents of the Polish-Canadian organizations, such as the president of the Polish Canadian Congress, the Polish Alliance of Canada, the Polish National Union of Canada and the Polish Combatants Association. In that meeting, the presidents of the Polish organizations and the Prime Minister agreed on basically those three points, which were to pressure Poland to lift martial law, to release the prisoners and to get back to the negotiating table.

That position has been very clearly enunciated. You can read it in Hansard in the House of Commons.

11 a.m.

Where the Prime Minister and the presidents of the Polish organizations differed was on food sanctions. The presidents felt that the government should impose food sanctions. Mr. Trudeau said no, we should not use food as a sanction, and they came to a compromise where they suggested, "Fine, we want food to get to Poland, but through other channels," through the church, through the International Red Cross and then maybe church distribution. That is something the Prime Minister said he would look at.

Interestingly enough, Ambassador Robinson yesterday told us it is Mr. Reagan's basic philosophy not to use food sanctions as an economic sanction. He pointed out that while Carter imposed the grain sanctions on the Soviet Union because of Afghanistan, Reagan was the one who lifted those very soon after he was elected. So that position on not using food as a sanction seems to be held by both the US and Canada, but I think we should look at can we get those food through other channels to people who need it?

Mr. Shymko: What inconsistencies--

Mr. Chairman: I am sorry to interrupt but Mr. Flis has indicated he has to leave at 11 o'clock and we are past 11 now.

Mr. Shymko: If you don't mind, I have a final question.

Mr. Flis: Are there many other questions? If there are many others, then I would wait and try to catch a one o'clock flight, but I have a 12:05 flight, so very quickly.

Mr. Shymko: The contradiction that I perceive, and Mr. Philip has raised the issue of sanctions as they apply, for example, to the American support in El Salvador and many other Latin American countries, and it is an effective means.

As you have indicated properly, Mr. MacGuigan's position is that there had been no doubt an interference by the Soviet Union led to the crisis in Poland; there is no doubt, as indicated by the Secretary of State for External Affairs. What we find an inconsistency, at least I find--and I hope it is shared by this committee--is if this is the case, how can you explain the granting of special status or special nation status in international trade which was just granted recently by Canada to the Soviet Union?



For years, ever since this country has been around, we had never granted that status to the Soviet Union in trade, and yet following the crisis of Poland, following the mass protest from not only the Polish community but the resolution of this Legislature and most Canadians, how do you justify giving that status to the Soviet Union in international trade at this time if generally the concern is there, and we know that the impact of not giving the status would certainly have been in line with the views of Mr. MacGuigan?

Mr. Flis: I do not know what special status you are talking about. Canada does provide long-term credits through the Export Development Corporation, if that is what you are referring to.

Mr. Shymko: It is called preferred nation status, which is a common position of trading countries.

Mr. Flis: There is no preferred nation status that I am aware of. It is the same trade dealings as we do with countries all over the world.

Mr. Shymko: It was announced in the Globe and Mail two weeks ago.

Mr. Flis: There is something which was announced in the Sun, which I discussed with Ed Lumley, and the headlines were not true, about the \$189 million for a pipeline deal. That is not true, but that could take a whole meeting.

Mr. Shymko: I would be interested in knowing whether or not that is the case as reported in the Globe and Mail two weeks ago, because it certainly sheds a different light on it.

Mr. Flis: I hope this committee will feel free to refer things like this to our committee, and we can raise it in the House or discuss it with the appropriate minister.

Mr. Chairman: Thank you, Mr. Flis.

Mr. Flis: Thank you for having me here. Let me congratulate you people for having this interest and for formally structuring such a group.

Mr. Shymko, if you read my opening remarks, hopefully we will have the same thing at the federal level and maybe we can work together.

Mr. Chairman: Thank you very much for coming back from Ottawa to assist us in our deliberations. It is very much appreciated.

I am sure this is going to greatly disturb all members of the committee, but we had in the original planning assumed that Mr. Flis would be with us until noon. Since he is leaving us to catch a plane, I am going to adjourn the meeting until two o'clock.

The committee recessed at 11:05 a.m.

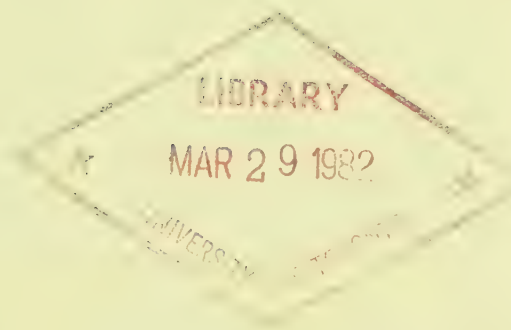
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SELECT COMMITTEE ON THE OMBUDSMAN

HUMAN RIGHTS

WEDNESDAY, FEBRUARY 10, 1982

Afternoon sitting





SELECT COMMITTEE ON THE OMBUDSMAN

CHAIRMAN: Runciman, R. W. (Leeds PC)  
Boudria, D. (Prescott-Russell L)  
Cooke, D. S. (Windsor-Riverside NDP)  
Gordon, J. K. (Sudbury PC)  
MacQuarrie, R. W. (Carleton East PC)  
Miller, G. I. (Haldimand-Norfolk L)  
Mitchell, R. C. (Carleton PC)  
Philip, E. T. (Etobicoke NDP)  
Piché, R. L. (Cochrane North PC)  
Shymko, Y. R. (High Park-Swansea PC)  
Treleaven, R. L. (Oxford PC)  
Van Horne, R. G. (London North L)

Clerk: White, G.

Counsel: Bell, J.

Also taking part:

Renwick, J. A. (Riverdale NDP)

Witness:

Lawlor, P., QC; Former MPP for Lakeshore; Former Chairman, Select  
Committee on the Ombudsman

LEGISLATURE OF ONTARIO

SELECT COMMITTEE ON THE OMBUDSMAN

Wednesday, February 10, 1982

The committee resumed at 2:13 p.m. in committee room No. 151.

HUMAN RIGHTS  
(continued)

Mr. Chairman: Gentlemen, can we come to order, please.

Members, we want to welcome Mr. Lawlor here this afternoon. He is going to be the first speaker. Pat, we appreciate you taking the time out of your day to come down here and revisit, as it were, and offer some insight into your experiences as chairman of this committee and your observations on what took place in your earlier deliberations.

Mr. Philip: Is there an honorarium paid for this?

Mr. Chairman: We will look into that. We are looking forward to what you have to offer the committee, Pat. The floor is yours.

Mr. Lawlor: Mr. Chairman, members of the committee, when I was asked to appear here, it was with some hesitancy that I agreed. Although, while chairman of this committee on a previous occasion, I apparently had made as a last gesture some remarks about wishing to appear at some subsequent time, I had forgotten that. I wish I had never remembered it. But I feel if you have anything whatsoever, however negligible, to contribute you had better appear. It is a public duty.

May I just say in preface that this committee, as I experienced it, is somewhat unique. It is the least partisan of committees. We had total agreement all the way along and worked towards that end. I think it is intrinsic to the nature of this committee that it be so because of the liaisons you have created and what you are representing with respect to that office. So I trust that spirit of good will prevails. There are not many left from the old committee. I see Gordon Miller here. We had some famous times together. I remember it all very pleasantly.

As a result of a call from Graham, I decided it was my responsibility to attend. I find I have a fair amount to say. I will try to say it as quickly as I can. I am setting what I have to say in point form, seriatim.

Finally, may I say I have a slight hearing problem; if there are questions afterwards, please speak directly to me. The hearing problem was the one reason I could sustain this madhouse.

First of all, I have only a couple of points of substance. All the rest are procedural as to how the damned thing should work. First, you have to narrow down this immense area. You are upon a sea. I felt when we were beginning to work on it that we



were far at sea as to how to designate areas, what to zero in on, how can we be effective and efficient in any particular regard. I believe we can. I had better get this "we" out of the way. I believe you can.

My first suggestion is that you zero in, as has been suggested in a couple of the briefs--in Tarnopolsky's brief and in that of the Amnesty International people--on your federal parliamentarians and legislators throughout the world. That will get you the springboard. There is plenty to do in that particular area with incarcerated members and parliamentarians in various parts of the world. It offers a natural collegiality and would heighten our blood pressure slightly with respect to the whole problem. It gives us an added incentive to acting in that way. I suggest that you zero in on that area and begin to explore it.

I want to place an addendum on that, though. There will arise from time to time, on humanitarian grounds, particularly egregious cases. Whether they are parliamentarians or not, of course, cognizance should be given to it and seized upon, perhaps along the lines I am going to indicate. Particularly I have in mind prisoners of conscience of all kinds. It is a special designation, and these cases usually require prompt action.

So there are two areas: imprisoned parliamentarians on the one side of the fence and prisoners of conscience as a special case.

The rest of my remarks are procedural. You might--and I am going to have to use this kind of language, not "you should"; it is not up to me to tell you what you should do. I will tell you what you might do, but I really mean secretly, without letting you know, that you should.

Through your chairman, your secretary or your counsel, as you see fit in each instance or issue, you might contact and set up a direct and ongoing relationship with six bodies. No doubt, you do that anyway. Those bodies are Amnesty International; the International Commission of Jurists, Canadian section; Walter Tarnopolsky himself, who wears two hats, as you know; the External Affairs department; the Inter-Parliamentary Union; and the International Labour Organization. As a result of your deliberations, you would state the particular area in which the committee is concerned, solicit their support and understanding and offer a liaison with them. In the course of these remarks I shall come back to this.

2:20 p.m.

The second point, with regard to money, is that whatever you might do personally--you will need legislative approval, of course, on money--some small sum will be necessary. The Legislative Assembly no doubt already contributes--I know they do--to the Inter-Parliamentary Union; so that's a load off. Certainly one should recognize whoever helps prepare briefs or provides information to pay for the costs of preparing and providing that information to us. I think the committee should be generous in this regard, knowing the plight of any one of these

organizations with respect to money and the skimpy basis on which they are operating. An outfit like Amnesty International will not receive funds from legislatures and parliaments directly or from governments as such. At the same time you will be soliciting information from them, I have no doubt, and you should extend the gratuity, in a sense, in that particular case.

As far as Canada is concerned, your counsel might be asked to prepare a memo as to what the provincial jurisdiction or role is in international matters and issues, with particular reference to the Privy Council decision of the Attorney General of Canada versus the Attorney General of Ontario in 1937, appeal case 326--that is the famous labour convention case--and other cases such as the radio communications and aeronautics decisions since that time.

Secondly, this memo might go into the whole business of ratification, of where Ontario stands at the present time with respect to its ratification. What is outstanding? What has been ratified? And why not in those areas that have not been ratified? Apparently, there is a wide range of matters. Of course, they have to get provincial approvals in areas that affect particularly property and civil rights. Thinking about it, it's a mysterious region to me, and you have to have a clear delineation of exactly where you fit in just legally on all these problems. That clarification is right up the alley of your very good counsel.

With respect to relations with Ottawa: Except, perhaps, with two sets of problems of relations--first, those with the International Labour Organization in Geneva and, second, through the Ontario houses abroad, which might well be used as a vehicle to raise important points with particular governments overseas so as to put teeth into any resolution that may be forthcoming from this committee--except in those two areas, all objections, resolutions, protests, animadversions or demands you may determine upon should go through External Affairs. It is fairly obvious, although it could be a point of debate, that you should ask for its response and co-operation, and the committee in its next meetings would follow it up. I have some reservations about the promptitude of the deliberations in External Affairs. The committee would have to place not pressure but strive for a co-ordination there and an ongoing exchange of information to see that it is received.

Second, with Ottawa you might consider setting up a relationship with a mirror committee to this one. I suspect that in Ottawa there is a human rights committee. Its functions are not, of course, the same as yours; but they would have that broader range, and it wouldn't do any harm to have an exchange and an ongoing relationship and flow of information between yourselves and that committee.

Third, I do not know how valuable this would be to you, but I would suggest it might be worth at least contacting the federal human rights commissioner, Mr. Fairweather. He is certainly cognizant of internal matters involving human rights, and no doubt the broader international field comes into his purview from time to time. In any event, he is there and it should be explored to see if there is any fruit to be gained from that tree.



The fifth point: At Queen's Park itself, in a particularly aggravating matter or a case of personal plight needing immediate attention and action, a quick convening of the committee, or several designated members--members are not always easily available--might take place and approval obtained. The chairman might, forthwith, take the matter into the House at whatever opportune time, before the orders of the day or thereafter, seeking a legislative resolution which, hopefully, would receive some press coverage--but do not count on it. That resolution could be forwarded to External Affairs, and in some cases to the House of Commons itself, for possible joint action on a case that arises that is particularly immediate and pressing. And if anything is to be done at all--maybe it is the eve of execution--then immediate action has to be taken if this committee is to be efficacious in this particular regard.

Perhaps you should consider preparing a separate report in this human rights area and interim reports on more pressing individual cases and kinds of cases from time to time. This committee has not done very much work on interim reports, but there has been at least one that I remember, possibly two. In this kind of case you might be obliged, to press your point home, to prepare a quick interim report.

Probably you should seek to become also the committee on human rights matters, to which the Ontario Human Rights Commission reports, and generally as the focal point for civil rights matters; or one to which all groups, particularly Amnesty International, the International Commission of Jurists, et cetera, would be free to come, so that people would have some place to go in pressing matters of this kind.

If you really felt ambitious, you might invite indigenous Ontario groups of bodies or individuals to appear on some future occasions, using the committee as a vehicle for publicizing and mediating, through Ottawa, with foreign countries about conditions of prisoners or oppressed individuals in these other countries--in other words, at some point not too soon, until you get this thing on the road, to advertise, inviting individuals in this province, who have personal cognizance of conditions of prisoners elsewhere in the world, to attend before you and testify. It is an outlet, it is a valuable outlet, it is a politically viable outlet for legislators in this province. I do not know where else they could go except to External Affairs. But this gives another vehicle at home and on site.

Since you are the sort of people who first ask "Why not?" and, only after that, "Why do?" you might consider the proposals of the International Commission of Jurists at page 10 of Graham's brief in co-sponsoring meetings and lectures on some occasions. I know that is a little remote, but it is a suggestion that is worth considering.

Certainly your counsel or secretary might be mandated to obtain the annual reports and publications of all these organizations with whom you have liaison and to pay for them and have an ongoing instant direct relation with the several international bodies within your central area of concern. This is similar to what is said in Graham's brief at the bottom of page 10.

2:30 p.m.

Probably you should enlist the attention and interest of the Minister of Intergovernmental Affairs in your work and ask him to appear for exploratory talks as to how he may be of assistance and what wise nostrums he may come up with from time to time to advance the cause and work of your committee. At least he will be aware that you exist.

There has been a suggestion with respect to the case work of Amnesty International in Graham's brief at page 18 that you be supplied with dossiers and be prepared to take up a case. I remember that, but I am not very clear--nor do I suppose any of us is--as to what they meant by that. I would think you have very little faculty to do case work. We would be depending upon them to do the case work, but there has been a suggestion made.

If this task is at all feasible, then it might be looked into, especially if the informed parties or witnesses were themselves Ontario citizens.

Second, there is a submission made at page 19 of Graham White's brief regarding individual members sending telegrams or a petition to a particular government. Clearly, members acting simply on their own might well do this without involving the Canadian government or any other government or even possibly their caucuses. Sometimes I wonder whether members are supposed to have consciences of their own in the operations.

Regarding the International Labour Organization--I am not clear on its status and I apologize; I should have checked it before I came--my feeling is that if they are located in Geneva they are quasi-independent; they are tied in with the United Nations but they are not a branch of the UN. I think they have a high degree of autonomy and are aware in a very broad way of what is going on in the world and would be of great assistance. Certainly they should be contacted and their aid solicited.

My final statement was to say that you should get a guy by the name of Renwick here; he started this whole thing. Since he is here, I will not press the point. May I finally say that I both envy you and don't envy you your task. I think it has direction and purpose. It broadens the mind and deepens the soul to be engaged in such work. It gives a swath in a sense of fulfilment that the grinding toil of everyday legislation, within narrow confines, does not give, and for that reason a little imagination and a good deal of courage would be necessary on your part, and I congratulate you. Thank you very much.

Mr. Chairman: Thank you very much. Do members have any questions they would like to direct to Mr. Lawlor?

Mr. Bell: Mr. Lawlor, I take you back about a year and a half ago when you sat on this side of the table and heard suggestions from a number of groups represented by various persons such as Harvey Bliss and Ian Scott from ICJ. If I recall correctly, Ian Scott was the very first one to say to this committee, "You should seriously consider recommending to the



House that there be some permanent committee struck." I think he called it, for want of a better term, a human rights committee.

Implicit in what you have said today is that there should be such a vehicle of this Legislature to carry out the various procedures.

Mr. Lawlor: It was explicit, John.

Mr. Bell: Yes. Also implicit or explicit in what you said is that the select committee on the Ombudsman should be that vehicle. Can I take you up on that, or can you explain why this committee--assuming you are correct, that there should be a permanent vehicle of a committee--should be the one, as opposed to a separate committee that has nothing else to do than concern itself with whatever its terms of reference might be?

Mr. Lawlor: I hope you are not expressing or indicating implicitly a bias of some kind, John. First, there are enough damned committees. The work of the Ombudsman's committee in the past has been so efficient, so thorough, so hard-working, et cetera, that there is some alleviation given with respect to direct relations with the Ombudsman. As a matter of fact, I thought this committee was in the process of doing itself out of a job, so efficient were we. The workmen's compensation cases began to fall off considerably from the first few times and what not. I think the committee has scope.

Second, you are involved in human rights. There would be within the committee a growing sense of what all that means, particularly with the liaison with the Ontario Human Rights Commission et cetera, to clue you in. We all think we know these things verbally, somehow we have got some sense of them. But when you get into them, there is a much greater grasp, and after a while, your intelligence grows on it and after a year you say, "A year ago I knew damned little about human rights, except to talk about them." Therefore, I see the whole thing as fitting in together.

What you would learn on the Ontario scene would be of great benefit in understanding international problems too--not that you run into any great degrees of torture, but out there on occasion there is putatively even that--but, in any event, what the plight of individuals is in being ground against governments and against an oppressive economic system. I think there is a coherence there and a logic that leads from one to the other. This would be the sense of the committee; that is why I suggested that perhaps, though, you should do a separate report on the rights issue, provincially and internationally, to keep the two areas a little separate.

Third, there is, it seems to me, a natural interleaving into the very work of the Ombudsman too. After all, in 90 per cent of that work rights of some kind are involved et cetera, and so your sensitivity to rights has being quickened in all directions, finding a centre in yourselves.

Mr. Mitchell: Mr. Lawlor, I want to thank you for coming

and giving us the benefit of your past experience with this committee. But even with the material having been provided--and, of course, you were not with us when we heard from Senator Neiman or Mr. Flis--I tell you quite honestly, I am still sitting on this committee somewhat shaking my head.

2:40 p.m.

Following along with what I gathered to be the context of your speech or your talk to us, I think you are suggesting for the most part that what we can do is educate ourselves. That is fine. But the task we have been presented with by Mr. Renwick in his motion in the House is basically to have our voice heard with regard to torture and such other things that are occurring in countries outside of Canada. I grant you this select committee on the Ombudsman looks at other situations within Canada, and there we have some power to do something, but the two speakers before you have indicated to me--and I may not be alone; perhaps I am--that really, and I used the expression this morning, we are whistling in the wind.

Implicit in Mr. Renwick's motion, I believe, is not to have a voice heard but to be able to do something. I expressed a degree of frustration here this morning, in that it is all fine and dandy to carry out these discussions, meetings and so on with other similar bodies, but does that really accomplish something?

We are making our voice heard. We are going on record as saying we are against this sort of thing. But we have had one person say to us--I am paraphrasing, and perhaps I am quoting him somewhat wrongly, but it was indicated to me that we should not be running off on our own thing; that, rather than dealing with things on an international basis, we should be dealing all the time with the feds and with the proper committees.

Senator Neiman sat here yesterday and said: "Until all of the United Nations, most of them being signatories to one agreement or another, give themselves some teeth and finally make a commitment that they are going to stick by them, all we are really doing is saying to these people: 'You are doing wrong. We do not believe it should be happening. It has to stop.'"

Other than educating ourselves and going on record as saying that we are against this, no matter what country it is in, that we believe people should have the freedom of speech and so on, I fail to see that there is any avenue available to this committee to make them stop.

As I was saying to Graham just after the meeting this morning, I somehow feel the political side of it is the most powerless. What I gather from reading articles in the newspapers is that the most successful groups are the ones that are working right in the countries involved; that is, the churches and perhaps even Amnesty International.

I tell you quite frankly, after yesterday, I was beginning to wonder why in the world I was sitting here. We can't put teeth where they are not going to let us. We're not going to be able to



have teeth put in where they don't want the teeth. In fact, it was stated here this morning that the UN is weakening.

I don't dispute your comments with regard to education. It may open our eyes as we go along as to what is really happening, because we only see so much in the print medium or on television, but I just feel we are batting our heads against the wall until the people who have the position to put teeth into it do something about it and forget their own petty little politics when they are concerned with human misery and so on.

Having said all that, I throw the question to you again, as I did the others, and ask for some comment from you.

Mr. Lawlor: With respect, Mr. Mitchell, you sound like the Ontario member from Missouri. It is perfectly valid for people taking your position; it is a healthy scepticism. Committees need people who question the very validity of the purpose and whether there is really any sense or just poor goodism involved in the thing.

I think I have said a little more than making this into an educational institution. I felt that there was an area, and going about it conservatively, gently, testingly, with the area that I thought you could be helpful in--you are not going to be plenary and you are not going to change the bloody world, but you happen to live in it--and that was the area of our fellow parliamentarians in other countries. First of all, they have in theory adopted the same ethos as we hold with respect to human freedom, human dignity and all those things, so there is a way in.

Secondly, while we do have only two offices abroad, they are in constant relationship with embassies, consulates and so on. All I am saying is that in the world today, and Quebec even more, we play officially an international role. We have taken and assumed some responsibilities in this regard, and therefore it is simply an extension of some of our tasks at home.

So you start in a narrow sphere and test it. It may not work. Amnesty International offers us all kinds of documents, and you have, as an appendix to the brief of the International Commission of Jurists, a page or two on who these parliamentarians are. Why not try to see if you can get home to some of them? Even if you are helpful in releasing a single individual, I think you will have performed well. You are not going to do very much, I agree. Governments that are punitive and totalitarian in nature are not going to pay a damned bit of attention.

So in a way, and again forgive me, your counsel has come down fairly close to despair, from where I sit--and I am damned if I am going to despair; not just yet, maybe next week--but I have stuck around this long and we will hope to see it through. It is too easy a thing to do, to throw up one's hands in the face of what appears to be a nebulous "You can't get your teeth into it" concept. We do like to be highly practical and to be able to say I want this and not that.

I think the International Commission of Jurists will supply

you with paper that will give you a real insight into some of these cases, and then it is up to you to decide whether you are going to pursue them. If you do not, then so be it. But to do less than that to me would be shirking a role that you might play, in your lifetime and in the world, as a legislator. It is certainly far more valuable and has far more punch than the role of an individual out in the public, like myself. Legislators do make a difference; they really do. I did not know that when I was here, but now I that have left I have learned you are quite important people, believe it or not.

Mr. Mitchell: I realize, Mr. Lawlor, that I have seemed somewhat negative to those before you and to you. Let me assure you--and I think this goes for all of the members; Yuri Shymko said it to me yesterday, and I think it is very true; you yourself commented on it--that if one is trying to measure success by the big accomplishments, maybe that is the wrong way to look at it. It is the feeling one gets when one sees one person released from whatever form of bondage he is in.

I guess as a new member of this committee I really want to have that sense or feeling of accomplishment. Maybe I am looking for accomplishment on too grand a scale. I guess I am only expressing to you my own feeling of the level of success I would hope we would be able to see and, I suppose, some annoyance at the people who, having set up a charter to create themselves, then try to find every rule in the book to go against the very things that they signed for.

Let me assure you, the fact that I may have sounded negative is because as new members I guess we formulate an opinion of how we are going to be able to accomplish so much. I think Yuri put it very succinctly. I just felt I should make you aware of my own feelings about the situation we are facing.

One final comment: You are probably quite correct that this is one committee where partisanship does not really show itself to be the controlling factor.

2:50 p.m.

Mr. Boudria: Perhaps Mr. Lawlor could give us some impressions on whether our undertaking such a role would water down the role we do have, which is, of course, to oversee the operation of the Office of the Ombudsman. Do you not feel that our starting to get involved in things like international affairs, the political rights of people in other countries and this type of thing will somehow take away from the time, the effort and the emphasis we are placing upon overseeing the operation of the Office of the Ombudsman?

Mr. Lawlor: It is not really international affairs, is it? It is a very narrow segment of a great field. We are not carrying out diplomatic responsibilities, even in the area of economics. It is a delimited area.

As I replied to John, your counsel, earlier, I think they fit together. That is the way I see it. Human rights are human



rights wherever they may be, and the Ombudsman is particularly concerned with those, more in a legalistic way, I admit. You get legislation in front of you and you have various resolutions and what not, and things from the Ontario Gazette that are coming before you through the Ombudsman; regulations are in question and things like that. So it is a narrower task.

There was a time, when the Ombudsman committee first got going--that was with Mr. Renwick and not in my time particularly--that they had a fairly massive load, because certainly the big issues they were handling at that time were massive themselves. The Pickering thing took days. The amount of evidence involved was mountainous. The degree of controversy and passion involved was also monumental. It absorbed the whole time and life of the committee. That is no longer so.

This wider role fits in well with what the committee was already doing. It is a kind of evolution. Therefore, it has value even in feedback. As I said before, if you are dealing with international problems, it has value in feedback as to the work you would be doing, touching the Ombudsman in this particular context or jurisdiction. So all things work together to those who love justice.

Mr. Boudria: One of the mechanisms that you suggested earlier we would use to voice our concerns about the treatment of prisoner X in a certain country would be to raise it in a resolution in the House and then perhaps forward the same resolution, perhaps through the Department of External Affairs, and it would end up going to that country through the regular diplomatic channels and so on. Do you not think that may not create tensions?

I can see two effects there potentially. The first involves the fact that we are not a federal legislature. Do you not think we could be interpreted as getting ourselves involved in things which may not be viewed as our concern?

I mentioned the second yesterday, I think to Senator Neiman. How do we condemn a certain country when at the same time we are selling them a nuclear reactor or something like that? The sale of the same reactor has implications right here at home, both at the federal and provincial levels. How do we deal with those kinds of things? I know it is hard. You have to trade principle sometimes to sell goods. I hope we would never be doing that but on occasion, at least in the international forum, one has to question if that has happened--at least in some countries.

Mr. Lawlor: On the first point you made, starting at page 12 of Graham's brief and the hearing we had here with the Department of External Affairs, Ambassador Yvon Beaulne and Frank Chandler, we went over this issue. They welcomed, they invited, they wished for this enforcement. They felt this was a very encouraging development on the part of the provinces. Far from setting up an unnatural or any kind of conflict between the two levels of government, as things now stand, they are open--"Barkis is willin'," as Dickens would say--to hear us.

Incidents of the kind you mentioned no doubt could conceivably arise, but that wasn't the impression that was left with us as being the rule. It shouldn't act as an obstruction to going forward with the proposal. On the contrary, it was looked at as a positive approach to the whole thing.

The second thing--I smile slightly--is that they were selling somebody in Pakistan a nuclear reactor and the government there is putting political enemies in jail et cetera. Are we going to sacrifice the nuclear reactor to save the political opposition or are we going to do the contrary? I think they both can be worked out. As a matter of fact, it is done every day. We try to do both. And if it comes to sacrificing the damned reactor, I am prepared to do it.

Mr. Boudria: I think every one of us would be prepared to do that. However, we know from past experience that, for instance, if we talk about the American grain embargo against Russia during the Afghanistan incident, the only people who were punished were the Americans. Everybody else never stopped selling grain. As a matter of fact, they took advantage of the situation to increase their own sales to raise the revenues of their respective countries. Although such an action was well-intentioned, it only punished the very people it was meant to protect.

The other thing is that sometimes, as in the case of Poland--this was discussed this morning when you were talking about food sanctions--you are not punishing the government there. You are only punishing the people, the proletariat.

Mr. Lawlor: There are many misconceived, self-lacerating actions taken by governments which have no impact abroad and simply inflict some harm on their own citizenry. These are rational actions that should be thought through before they are carried out, but how it affects this I am not quite sure.

3 p.m.

Mr. Philip: I found your suggestion concerning the quick convening of the committee and taking the resolution to the House to be procedurally an interesting one. One of the things Senator Neiman pointed out was that often, if we can bring to light, or bring to public attention, or focus on an arrested political prisoner early it may well save his life, and that if it isn't caught fairly early in the game they often just disappear or there are all kinds of things that happen to them. Procedurally, I think it may have some real relevance to the committee, and I think we should certainly look at that.

Mr. Lawlor: One of my proposals to you was exactly that and how it could be done. I think it can be done quickly, and I think the chairman will have the ear of the House. You see, it wouldn't be that often; it would be very rare, on the whole, as far as I can see.

Mr. Philip: I have some confusion or maybe some disagreement--I'm not sure which--over your suggestion or your



focus narrowing. In the narrowing to elected officials and prisoners of conscience, I guess the problem I have with the first one is with what our role would be vis-à-vis the Inter-Parliamentary Union, since we have been informed that we would have no status at that other than that of an observer and that it is only federal parliamentarians who would have status on the Inter-Parliamentary Union. Would we be duplicating the work of that body?

Mr. Lawlor: Ed, you are telling me something I didn't know, that we have no status. I remember being over there several times and appearing before the Inter-Parliamentary Union, being entertained by them, having conversations and being accepted as though we were brothers in arms et cetera, which we were. This Legislature pays money into that union and helps to support it. And I think they're pretty extensive funds, too, if you look into it, that we pay--a good chunk of money. I can't imagine what you mean.

Even if what you are saying is accurate, that we have no status as such as parliamentarians on a provincial level vis-à-vis that union, nevertheless I would think the union would be more anxious and willing to give every co-operation to such a body as this. Admittedly it's exploratory, it's new, it's something that has not been done before; but my experience with that union is that they are quite vital and alive and willing to try to get whatever information they can.

Curiously enough in that case--and I have suggested to you that your counsel explore with them what the liaison might be--in dealing with them we can deal with them directly. I don't think you have to go through External Affairs et cetera. On the presupposition I have that we are of equal status, simply members one of another in that union, we simply consult with those of the same ilk and receive whatever advice and information they have, which is probably pretty pretty bloody extensive.

The only other point I have to make is that in those Commonwealth conferences, which are all tied in with the Inter-Parliamentary Union, Ontario and every province of this country sends representatives who have full status. You speak at the microphone as anyone else does; your credentials are the same.

Mr. Philip: I find your comments interesting, I think, in the light of and perhaps in contrast to what Senator Neiman said, which certainly gave us the impression that a provincial parliament would not have any official status at that body, and it may well be something that we will want to have counsel look into for us.

The other question I have is that it seems to me that one area where we might be able to move quickly and be of assistance would be in dealing with those specific cases of human rights concerning relatives of Ontario citizens. Those are the kinds of things I am sure you dealt with on a regular basis, as a member of the provincial parliament, for the people in your community.

Mr. Lawlor: I have some reservations with respect to

that. I suggest that at some future time, after you have your contour lines laid out a little bit and know which direction you are going in, that might be considered. But there is a mare's nest involved in all that too, as to what the representations would be, who would appear, the demands made upon you and the expectations raised that have no validity and that you cannot carry forward.

This would have to be very deeply thought of by the committee before they launched it, as far as I can see. It would be unwise to do that with any immediacy at all. It has to be worked out. You would have to lay down some criteria. Just as this committee will not on most occasions hear members of the public complaining against the Ombudsman--we turn down many cases, for darned good reasons--so in the other instance a certain wisdom will have to be exercised as to the public outlet. I do not rule it out. I suggested it be done, but what I hear from you, Ed, is that it has some priority, some degree of overriding importance, and I would not agree with that.

Mr. Philip: In the light of focusing then, and in the light of defining, would you not agree that the term "prisoner of conscience" could be either very broad or very narrow? Can you assist us in defining that?

Mr. Lawlor: I'm sorry; what could be broad or narrow?

Mr. Philip: "Prisoner of conscience," which is the other area. You said we could narrow it down to two areas. One would be the imprisonment or persecution of elected officials.

Mr. Lawlor: And the other was prisoners of conscience, yes.

Mr. Philip: Can you elaborate on "prisoner of conscience," or do you know of any definition we could use that would allow us to focus on that?

Mr. Lawlor: First of all, I think there is a category recognized by Amnesty International, by the International Commission of Jurists, and no doubt by the others too, of people who, on ethical grounds solely, are persecuted precisely because they hold a religious or moral stance, et cetera, and are imprisoned. The obvious examples would be Martin Luther King and Mohandas Gandhi, or people like them.

The second point is that they are not elected officials. No doubt, all over the world there are cases of this kind: crusading journalists of various kinds, moral leaders of a people or, at least, moral spokesmen. I do not think we have all that many. We should have more, but they are not altogether popular. What I am saying is that Amnesty and the other bodies with whom you will be in contact will know who is such an individual, or will suggest that this is such a case, and you will make your own judgement as to whether it is a question of conscience.

Mr. Philip: One last question: Unlike most other committees, this committee does not have a minister to whom we relate on a direct basis. You mentioned the Minister of



Intergovernmental Affairs. What is the relationship you see to that ministry? Why would it be that minister and not the Provincial Secretary for Justice, for example? And what do you see as the relationship of a minister to the work of this committee or the subcommittee of this committee you are suggesting?

3:10 p.m.

Mr. Lawlor: That is a difficult question, yes. Categorically, but not logically, it could be the Minister of Labour (Mr. Elgie), who has jurisdiction over human rights as such. I always considered that a bit paradoxical. However, Thomas Wells--is Thomas still the minister?

Mr. Philip: At least until tomorrow.

Mr. Lawlor: It is his job to be in constant communication with Ottawa, and he probably could give some good thoughts with respect to how that relationship might be conducted. It is purely procedural, but it is a sense of what goes on in Ottawa that we here do not have, and which he is by duty supposed to have. Therefore he would be aware of the wide range of liaisons with Ottawa, with the Ottawa scene and with committees which might have some relevance to this particular committee. His general knowledge no doubt would be of some assistance.

Mr. Treleaven: Mr. Lawlor, I have two matters. Could you, first, repeat what you said about interim reports from this committee to the House? That was your third point, I think. Could you repeat that please, or clarify?

Mr. Lawlor: As you know, it is a good device, the interim report; just as the use by the Ombudsman of an interim report is something not half enough availed of. But it is there and it should be used.

What I am thinking of, I suppose, is the speedy resolution that has to go to the House in some critical case. There are some less speedy, but nonetheless imminent and pressing, cases that may come before it, and if that is the case, and you do not feel you want to take up the time of the House in order to bring this case forward on a pressing basis, then a small report as to this thing would be taken and presented to the House. In other words, you would not have to wait for the long periods in between your reports; a case would be given attention and brought to public notice in the interim period.

Secondly, it would show how vital the committee is and how aware of its role and function and responsibility in this particular area, should it do so from time to time. The matter might even be given greater prominence in the House by way of a foreshortened debate of some kind--say in a case where the person was not under imminent fear of death, or severe strains leading to insanity or anything like that; but here was the situation, and you did not want to wait a year for your fellow members to know about it.

Mr. Treleaven: The second question is where does the

chairman obtain his authority to go to the House on an emergency basis in between the sittings of this committee? I understand that when the House resumes, this committee has no authority to sit until the House rises in late spring or early summer. Where does the chairman get his authority without the full quorum of this committee? Are you suggesting that one simply usurps the authority and goes ahead and does it, and worries about the authority after?

Mr. Lawlor: I would suggest that on occasion--but, no, I am not suggesting that.

Mr. Treleaven: As a solicitor you are much more used to structure than I.

Mr. Lawlor: I am more interested in following the rules, wretched as they may be.

With respect, may I ask that you direct this question to Graham White? He knows the basis if there is one; and if there is not one, then we will have to acquire it.

Clerk of the Committee: Mr. Chairman, I have two comments. First, it is my understanding that there is a common misapprehension about the interpretation of the committee's term of reference. I would interpret the committee's frame of reference as saying that the committee may not meet concurrent with the House, which is to say it could meet Monday mornings, Friday afternoons, over dinner, without any kind of special authority.

In addition to that, were this committee or any other committee to be given a permanent mandate to inquire into these sort of concerns, one could simply put in that committee's term of reference authority to the chairman to do such and so upon consultation with some members, all members, a certain number of members, or whatever.

Mr. G. I. Miller: Pat, it is good to have you back again and to hear some of your wisdom. I would like to indicate now it was a pleasure working with you.

There is one question that comes to mind and maybe you could shed a little light on this. I think you mentioned it briefly. What role, if any, could the Ombudsman play in implementing this program?

Mr. Lawlor: Very little, except by staying away from South Africa.

No, I do not think he has a role as such. As I said before, the Ombudsman's position sensitizes you to human rights, human rights here in Ontario, to the extent that you are more aware than you would otherwise have been of what kind of harms and afflictions can occur through injuries to rights, et cetera, and to that extent you are open to the rest of the world; but indirectly, no, he has no role. That is why I say it should be really quite separate.

Mr. Shymko: Mr. Chairman, I guess I was one of those who



were unfortunate not to experience your presence in the Legislature and in committees and I would like to congratulate you on your presentation.

Mr. Lawlor: Did you say unfortunate?

Mr. Shymko: Unfortunate, definitely unfortunate. I read your various statements in Hansard--not everything but some of it--and I would like to say that your presentation today is the first practical list of suggestions and recommendations that I am sure we will be deliberating on.

I simply wanted to comment and maybe ask a question or two. There seems to be a parochialism, or maybe the most appropriate word would be provincialism, at this level of our jurisdiction in the provinces in terms of the wider scope of concerns. It is unfortunate that the first reaction, and it may be felt by a number of members, is that is not our area of jurisdiction, let us not open up a can of worms, it is a federal area, why do we need these headaches, we have got enough problems with user fees and other things, with OHIP and education and other areas, than to deal with this.

There is a perception that at least I have. The public has not certainly perceived it. Many of us have been involved, I am sure, in the past in signing petitions and having been approached by various organizations who have had concerns in the area of human rights and they do not make that distinction between federal parliamentarians and provincial parliamentarians.

There is also a need, and I think such a committee would establish that need, and perhaps assist in educating our own legislators and making them more aware of the concerns of the issues of human rights, not so much domestically as internationally as well, because civil liberties and political rights and freedoms are indivisible. What is happening outside of this country has very often a great impact here, and what we are doing can certainly have a great impact in a positive nature in the legislatures and policies of other countries.

I have pointed out, and you reiterated it so well, that if we succeed in freeing an individual and saving the life of a parliamentarian or a prisoner of conscience in amending policies, in changing policies, it would be the greatest accomplishment of this committee.

The irony and the frustration, having heard from Mr. Mitchell and perhaps expressed by others before, is that it is an area of federal jurisdiction and yet there is no parliamentary committee or subcommittee at the federal level that deals with human rights per se, outside of the federal human rights commission.

3:20 p.m.

The Helsinki group is trying desperately to be changed into a subcommittee of the standing committee on external affairs, and they have problems in even obtaining that type of status. So what

we would do, here in this province, I don't know about other provinces, is perhaps create a precedent of a legislative committee to deal with these issues hoping that this would--logically, it should flow in the opposite direction. I think, at the federal level, we should have a parliamentary committee joined perhaps with the Senate and the House of Commons. If what we do here will have an impact and will assist the members of the House of Commons and the senators who want to create that subcommittee, we will have accomplished a great deal.

I think we can have a great deal of impact through moral suasion, in that here is a provincial legislature that would have given that status which normally should be expected at the federal level. I am very optimistic. From all the arguments you have pointed out, there is no doubt the need exists.

I have been surprised--as Mr. Philip mentioned, we questioned Senator Neiman on the Inter-Parliamentary Union and she almost categorically stated that there is no way that Ontario could have a separate status in terms of membership. We have the status not only with the Commonwealth Parliamentary Association, we have it with the International Association of French-Speaking Parliamentarians in Ontario, which has just been accepted, along with Quebec and New Brunswick.

It is a shock that you said that Ontario pays moneys. I would like to get more information. Is this something you can document?

Mr. Lawlor: Maybe I had better be clear on that. I was thinking more of the commonwealth parliamentary. I am sure we pay there. It may be that the parliamentary union is a separate body.

Mr. Shymko: If you could find out and provide us with some documentation that we indeed provide some financial assistance or assign some funds to the Inter-Parliamentary Union, it would facilitate our argument to have some status of representation on the Canadian delegation. I would appreciate it if you could possibly follow this up with some evidence to this effect.

Mr. Lawlor: Mr. Shymko, I decline. I don't want to get married today. I will turn to your chairman and suggest that he is in a position to discover that rather easily or delegate it to someone. Inquiries in the Speaker's office or the Legislative Assembly office as to their budget would disclose that rapidly and easily and I suggest you check that.

I want to apologize. I could be wrong with respect to that particular body. The one I really had in mind, and I identified the two, was the Commonwealth Parliamentary Association. There is no question about giving money to them.

Mr. Shymko: So you are not too sure about that particular one?

Mr. Lawlor: No. You could check it out.



Mr. Shymko: I think we should pursue that. In the area of jurisdiction, from the established programs financing proposals of cutting it, we see the federal government moving into the jurisdiction of education, in having a greater say, a greater role. I don't see anything inconsistent in the provincial governments playing a greater role in the policy decisions on external affairs.

The irony is that in the areas of economics and trade we have assumed an international role for economic reasons and the profit motive and other materialistic aspects of social and economic survival are very important. And we have taken on the international role including our own trade missions. When it comes to human conditions and the lives of individuals, the basic fundamental aspects of human survival, I think there is obviously almost a contradiction. Why do we hesitate and why have we not assumed this type of role internationally?

I was intrigued by a particular aspect, the role of provinces in the area of External Affairs. I have always had the impression that of all the federal departments, External Affairs was the one most isolated to the senior mandarins in terms of policies, very little access or impact of public opinion. It was almost relegated to the select few of the top civil service.

That is a perception, I guess, that many people have. So the more we can open up public input and provincial input, in this case, or input from elected representatives at the provincial level into the area of External Affairs as part and parcel of the type of change--I don't want to say populist type of change, but certainly a positive impact in the representation of policies that are representative of the concerns and feelings of Canadians. I was intrigued by this. We would be playing a major role in that area of change of External Affairs policy.

As to the trade offices, which are under the jurisdiction of one of the ministries and the role of the Minister of Intergovernmental Affairs (Mr. Wells), we would have to change the perception of the role of those trade offices as perceived by the Minister of Industry and Tourism (Mr. Grossman) and the role, perhaps, of the Minister of Intergovernmental Affairs who sees basically the provincial-federal relations as he deals in the two areas of jurisdiction. There may have to be an expansion or at least a different perception of their roles by these two key ministers.

Mr. Lawlor: They would get astigmatism.

Mr. Shymko: Do you feel there may be some grounds for obstacles and almost a resistance to expanding that role?

Mr. Lawlor: I have no doubt they will be resistant.

Mr. Shymko: The other area concerns the Minister of Labour, who has ministerial responsibility over the Ontario Human Rights Commission.

You said you hoped this committee would become the forum, or

a House committee on human rights, so to speak, to which the Ontario Human Rights Commission would be reporting. Presently it reports to the Minister of Labour. There may be almost a confrontation here over areas of responsibility of that particular ministry. If this committee, which deals exclusively with the Ombudsman's office, demands that the Ontario Human Rights Commission report to it, I see the logical argument that we should assume this area of responsibility and expand our mandate, but it is a major change of responsibilities.

Mr. Lawlor: Mr. Shymko, first of all, you don't demand. Most of the time I think it is unwise to demand. You request and then if you do not get what you want, you wait a while. Patience may be the only virtue.

Second, most commissions and bodies--well, this is not true either--but many of them report to a particular parliamentary committee. The Workmen's Compensation Board appears yearly before one of the committees of this House, social development or what not. It is an accepted practice. The only report one makes is not to one's minister but to the Legislature in between.

I don't think it is a radical move to suggest and consult with the minister himself and see if it would not be of benefit to the committee and to the government as such to have the Ontario Human Rights Commission report at some point. For instance, the public trustee of Ontario and the official guardian's office report to the annual estimates of the Attorney General. There is quite a wide swath who do come in and report and send their representatives for questioning and to supply information.

Maybe I am too sanguine about this. But they often welcome some place they can go, some intermediate body, some relatively neutral ground upon which they can voice their peculiar problems with some hope of alleviation. Ministers are extremely busy, and it is only a small segment of what they are doing. Very often, I think ministers find some of these things irritants rather than causes of relief. So, on the whole, I don't think you would find much resistance there.

I confess that I consider it in this regard largely educational. You are not going to castigate, except perhaps in the scenarios of Indian Affairs, the functions and workings of that particular agency. But it will make you aware of the range and nature of human rights problems in this province, and I don't think most members really are. We have our own problem people who come into our constituency offices; we are aware at that level. But we don't have a complete picture.

3:30 p.m.

Mr. Chairman: I'm going to have to jump in here. Pat, we want to thank you for taking the time out of your day to come down here and share your experiences with us and offer a wide range of recommendations, which I am sure are going to be helpful to us in our deliberations. Thanks again.

How does it feel to be on the other side of the table?



Mr. Lawlor: First of all, it's nice to be a free man, unlike some people. On the other side it's better at that end.

Mr. Chairman: Thank you again.

Of course, we also have the originator of all our problems with us here today.

Mr. Mitchell: And he is usually quite brief.

Mr. Chairman: Jim, we thought it would be helpful to the committee to extend an invitation to you to appear before us to assist us by telling us your reasoning behind why the resolution was placed in the first instance and perhaps some recommendations you may have in regard to how this committee can report back to the Legislature.

Mr. Renwick: Mr. Chairman and members of the committee, it was with some trepidation that I received the invitation to appear, because the course of the discussion this afternoon has raised all the unanswered questions that were involved in the resolution I originally put to the assembly.

May I say, however, right at the very beginning how grateful I am that your committee decided in this new parliament to seek the approval of the assembly to complete the work begun by your predecessor under the distinguished chairmanship of my colleague Patrick Lawlor, then the member for Lakeshore, and how grateful I am that the assembly gave its approval to your continued deliberations on the resolution that was passed unanimously by the assembly on May 29, 1980. I look forward to your report on ways in which the assembly may act to make its voice heard against political killings, imprisonment, terror and torture.

The resolution speaks to the political oppression of individuals by killings, imprisonment, terror and torture because they attempt to exercise their political rights. The resolution asserts the primacy of individual political rights in their most elemental sense over and against the power of the state in its most brutal form.

I wish to address one aspect of your work. There are others that I will comment on, but there is one aspect which has arisen, of course, in the discussion this afternoon and which is implicit in some of the remarks my colleague Mr. Lawlor made and in the concerns Mr. Mitchell expressed, to which Mr. Shymko addressed his comments, perhaps in a more optimistic sense than Mr. Mitchell, and that is the concern which ran throughout the original debate. Everyone wanted to support the resolution when it was put forward and, of course, everyone did speak for it, with one exception, I think, and then not on the question of the substance of the problem but on the question of whether or not it was a matter about which this assembly could speak out.

The question, therefore, and I think a fundamental one, that your committee, if I may, with deference, suggest, must address in your report is what is the justification for the assembly to speak out? I believe that until the answer to that question is put then

the methods by which it can be carried out cannot be clarified in any certain way.

I believe there is justification for the assembly to speak out on these questions. I am speaking about justification in a legal sense or in a jurisdictional sense, which was the term used by my colleague. I want to spend a moment or two on that justification. I am not suggesting for a moment that what I have to say is etched in stone or is not subject to dispute. But I do believe there is justification for this assembly within its jurisdiction to speak out on these matters. Indeed, I would go so far as to say that it is not a search for justification but that, having established the justification, you may very well find that there is an obligation jurisdictionally for this assembly to speak out.

Let me make it very clear that I am speaking about the assembly; I am not speaking about the executive branch of the government. I do not believe that within the framework of the resolution which is under your consideration for report to the assembly we were speaking about a role for the government in its executive capacity, nor were we speaking about a responsibility of a particular minister of the crown. If asked to I can perhaps come back to that aspect of it.

I am speaking simply about the assembly as such speaking out with respect to these elemental civil and political rights beyond the borders of Canada. I make that distinction because some people may think it is somewhat self-righteous for us to be speaking out beyond the borders of Canada about these matters. I think I should address that particular problem before I move on to the basic justification.

It is the responsibility of the assembly and of the government in each of the provinces and other jurisdictions in Canada and of the federal government to talk about, deal with and protect the civil and political rights of people within Ontario, within the other provinces of Canada and within Canada as a whole. That is not to suggest that we are in any way perfect in the protection we provide to the civil, political, cultural, economic and other rights of citizens. But our parliamentary institutions, of which we are one component here, have that responsibility as a whole and not in any special or particular sense. So I do not think we can be accused of self-righteousness by purporting to suggest to other states or other governments or to take a stand in the international sense about these elemental civil and political rights to which the resolution is addressed.

If I can turn now to the main question: What is the justification for the assembly to speak out? First of all, Canada has ratified the International Covenant on Civil and Political Rights. It has ratified other covenants as well, but I want to speak about the civil and political rights because it is those elemental rights that were of immense concern to me when I originally placed the resolution before the assembly. Canada has ratified the International Covenant on Civil and Political Rights, which in substance gave legal expression to the United Nations Universal Declaration on Human Rights.



I think there is a very clear nexus with respect to the relationship of the assembly to those covenants. First of all, we all recall that Bill 7, which was just passed, and the predecessor of the Ontario Human Rights Code, contain a reference specifically to the Universal Declaration of Human Rights. The reason that is so is that it is in the nature of our federal system of government that the federal Parliament is responsible legislatively with respect to matters within its jurisdiction and, legislatively, the provincial government is responsible for those matters within its jurisdiction.

3:40 p.m.

The broad spectrum of civil and political rights in Canada fall to be dealt with by both levels of government. Canada, when it adhered to, or acceded to, the international covenant, bound Ontario by that act in international law, so that Ontario is bound in the international community with respect to the performance by Ontario of its obligations within its legislative competence through that covenant.

One need not take my particular view of that. Should the committee, or the counsel of the committee, wish to consult about that matter, if you need to establish that connection between Ontario and an international covenant operating in international law, and the obligations of Ontario with respect to that covenant, I could certainly recommend that you consult with Mr. H. Allan Leal, who was until recently the Deputy Attorney General of the province.

He is extremely knowledgeable on the whole question of the impact on Ontario of the international covenant and the problems which have arisen by reason of the accession of Canada to that covenant, let alone by the failure of the government of this province to have introduced legislation into the assembly to make certain that Ontario itself, within its legislative competence, accepts fully the obligations imposed by that international covenant on Ontario by virtue of Canada's adherence to the international covenant.

Those are extremely legal matters, but there is no question in my mind that the link between this assembly and the international covenant can be established clearly in law. I may also say that I would like to move beyond that, and I have some solace in moving beyond that strictly legal view of it because I happen to have received a copy of the report to the House of Commons respecting Canada's relations with Latin America and the Caribbean. I am not certain, but I believe this is the second report of the subcommittee on Canada's relations with Latin America and the Caribbean.

It is interesting that in the course of its comments with respect to human rights in that area, but without specifically addressing its attention to any particular place in Latin America, it did have a surprisingly appropriate statement to make about the very question which your committee is considering. Let me just lead in to it, and I can leave this with the committee.

Paragraphs 22 to 33 dealt with questions related to human rights in the ambit of the authority of that particular committee. I only quote in part from it. It states, and this is by way of introduction to the key sentences which are in this report: "Human rights embrace civil and political rights, which are the means to give effective expression to the needs and dignity of every person. Among the most important of these rights are"--and a number of them are stated, but the one pertinent to the specific resolution before you is "the right not to be subjected to torture, or to cruel, inhuman or degrading treatment or punishment."

Then--and these are the two key sentences that I would like to quote from this report--"The subcommittee affirms that human rights repose in individual human beings and not in states. Consequently, the discussion of human rights violations in any country does not constitute an infringement of state sovereignty."

Then it goes on: "We assert that these rights"--the next five words are in italics--"do now repose in human beings and that"--and the next four words are in italics--"states and all people have an obligation to recognize and protect them. It is only the realization of this obligation that is still tragically incomplete."

So it would appear that subcommittee took that position, and I certainly would think it could be adopted by your committee. I think you could take the position that the Ontario assembly speaking out on this issue is not infringing the state's sovereignty in any international legal sense at all, because we have accepted the international covenant with respect to ourselves. We have a right, a duty and an obligation to speak out about the performance in other parts of the world of the provisions of that covenant in so far as they relate to the deprivation of human beings of any of their basic human rights. I think it is possible to answer the jurisdictional question authoritatively, decisively and clearly with respect to the justification for this assembly speaking out.

Let me go on briefly to one or two other matters simply because they are of concern to the committee. I will pick up where I stated that I was not thinking in relation to the government or a minister of the crown or the executive branch of the government--I was thinking solely of the Legislative Assembly. I was trying to address the question of a *modus operandi* within our framework that would permit us to deal effectively with this question. I believe it would be unwise to provide a jurisdiction for any of the existing standing or select committees of the assembly in this area. I think it would lead to a lack of clarity.

Each of those committees has responsibilities received from the House and I think it is fair that those committees should be restricted to the ambit of the territorial jurisdiction of the province of Ontario as such. I do, however, believe there is a device that would be open to us and that would be to establish what I have called, for want of a better term, "a Speaker's committee on the universal declaration of human rights" or some such committee as that. It would be neither a standing committee



nor a select committee of the assembly. It would, however, be a committee of the assembly provided that in due course the procedural affairs committee, or your committee in concert with the procedural affairs committee, decided to establish by way of the rules some such form of committee that would reflect this concern. I believe it is a legitimate one for the assembly to speak out about.

It would have the added advantage that, to the extent I am aware of it, it would be through the Speaker's office that liaison is maintained with the parliamentary associations--Canadian, commonwealth and interparliamentary, all of the various parliamentary commissions which are available. So it would have a connecting link in this field to activate or motivate or get in touch with people in other parliamentary associations throughout the world that are concerned about similar matters.

3:50 p.m.

I believe the title of such a committee would mean that it would have a status under our rules which could be reinforced by an adequate mandate to carry out the work which would be referred to it. I may say, however, that I think one should move with caution with respect to the limited mandate. I do not think there is any point in our establishing some generalized committee under such a name if it is going to raise expectations which it cannot in any way meet.

The whole tone of the comments which I made in the assembly on the original introduction of it related to my concern that in some small way, but in a very clear, definitive way, we take hold of this problem and speak out in this area. I throw that suggestion out for what it is worth, in order to separate out the nature of that committee from the regular committees of the assembly, standing or select, and also to distinguish clearly that it is a vehicle of the assembly and is not a matter related to the executive branches of government, which would have some very real problems with respect to the kinds of matters that this resolution addresses.

One comes back to the fundamental; that we sit in this assembly as representatives in a democratic society and have the ability and the freedom to operate without fear of infringement of our civil and political rights in the parliamentary sense. It is therefore that kind of sense that we have of the fortunate position which we are in, in a political sense. Having these protections, having the freedom from fear, I believe imposes on us an obligation to speak out in order to lend what little voice we may have to protect people in other countries who, in one way or another, are deprived of these civil and political rights, or who exercise them with significant fear and concern.

The one thing which is very clear, of course, is that even in the two years since the resolution was introduced, the human rights question, the civil and political rights question has been one of the major questions which has been before any number of bodies and is of immense and deep concern to us all.

My last comment would be that such a committee could liaise with and, if agreeable, act in concert with, the bodies that you have interviewed--the International Commission of Jurists, Amnesty International and others. Nevertheless such a committee, that is, a Speaker's committee, could be supportive of, but would have to be extremely careful not to tread upon, the legitimate jurisdiction, in a nonpolitical sense, which those bodies have tried to exercise, so that their work would not be hampered or infringed upon by the creation of this committee of this assembly. Within that framework I think it would be possible to devise the name for the committee, the mandate of the committee in its limited sense, and provide a useful vehicle for the work of the assembly.

The composition of the committee should be similar to the composition of other committees. It should be representative of the political parties in the House on a proportionate basis. It should be established in the rules of the assembly so that it is clearly there as a special and unique institution of this assembly.

I do not believe it would be beyond its ambit, in careful liaison with Amnesty International, to adopt the criteria for prisoners of conscience that association has adopted, and on a specific and urgent basis speak out in individual cases when warranted. But those are matters to be left to the committee as it evolved, reported to the assembly, and had an opportunity to have further guidance from the assembly about the extent of its role. But, in the limited sense, I think it is possible to find one's way through these jurisdictional problems to an actual committee, which is a committee of this assembly as such, to speak out about these elemental violations of human rights by the brutal force of oppressive regimes in other countries in the world.

Mr. Chairman, I don't know whether I can add anything further to that, but those are basically the comments I wanted to make and I appreciate the opportunity to be present today.

Mr. Shymko: I have two questions, Mr. Chairman, to Mr. Renwick. I think one of the things you have stressed is the impact of the international covenant of human rights on the citizens of Ontario, and, in my understanding, on some of the Legislature and perhaps some of the implications that may necessitate some changes by virtue of Canada's adherence to the covenant. You suggested that perhaps the committee could ask Mr. Allan Leal to appear before this committee to provide details. In the light of my understanding that we may have some problem timewise in regard to further witnesses, I just wondered, Mr. Renwick, if you could generally detail what some of the serious problems are.

Mr. Renwick: I don't think I was thinking of specific serious problems. I was speaking about the fact that I believe it to be clear that there should be introduced into the assembly an act of the assembly that would adopt for Ontario the international covenant. That is the missing link at the present time. Canada has adhered to that covenant. By virtue of its adherence, it is clear in international law that the provisions of that apply to the province of Ontario. There are many statutes of Ontario which



affect rights given under the covenant. The missing link is that the government has not seen fit to introduce legislation adopting that covenant here in Ontario so that it is the yardstick by which all our legislation must be judged, even though the government has been engaged in discussions about compliance with the federal government.

My main point was simply to make the connection that there is a legitimate obligation on Ontario to comply because it has been made a party to an international covenant and, therefore, it is legitimate for Ontario to say we have a voice in what people are doing in other countries with respect to their compliance to this covenant.

Mr. Shymko: Correct me if I am wrong, it had always been my understanding that if a country's national government, even if it is a confederation of provinces, adheres to or signs a United Nations covenant it is binding on all levels of government. It does not necessarily require a provincial statement of adherence but automatically both the federal level of government and its area of jurisdiction and the provincial levels of government and their areas of jurisdiction have to comply, or at least have indicated compliance, with that particular covenant.

4 p.m.

Mr. Renwick: I have said all that I think I can usefully say on that. That is a very real question but that is the question which you should leave to counsel for your committee, because it is clear on the basis of the legal precedents that Canada can adhere internationally to any kind of a covenant it wishes to adhere to. Whether or not it is binding in Ontario would depend entirely on the act of Ontario. The classic words were that the federal government cannot encroach on the legislative jurisdiction of a province by end running through the international field. The conventions in other cases so said.

That is why Ontario, having a certain sovereign legislative jurisdiction, to the extent that human rights are involved in that jurisdiction, which they are, for example, under our own Human Rights Code, are purely Ontario matters, nevertheless you will find many of them repeated in the international covenant that Ontario is a party to, not by virtue of signature but by virtue of Canada's adherence in the international community.

I wanted to try to establish a jurisdictional basis for Ontario, in turn, speaking out about infringements of the kind of civil liberties that we have here in Ontario when they are abused in other jurisdictions, particularly in those jurisdictions which have also been signatories of the same covenant that binds us in Ontario. There are now 60-odd nations that have adhered to the international covenant. For example, El Salvador has adhered to the international covenant.

I hope I have answered that question, but I wanted to establish jurisdictional basis. I believe it should be left to your counsel as you are best advised.

Mr. Shymko: My second question was with regard to your proposal of a Speaker's committee on the declaration of human rights. I was somehow surprised because you were the mover of the original motion to expand the mandate of this committee, and I had the impression that your intention had been to simply expand the mandate and to leave the present select committee on the Ombudsman as such, which is also a vehicle of the Legislative Assembly, to deal with it.

It seems you are now suggesting it is not this committee but a separate committee--a Speaker's committee--which would leave the select committee on the Ombudsman to deal with the Ombudsman's administration of his office and its mandate, and a separate committee dealing with human rights in addition to this one. Is that my understanding that you are proposing something completely different now?

Mr. Renwick: I am not proposing something completely different, but at the time I introduced the resolution I wanted to find a vehicle that was in existence to which this matter could be referred. By a process of elimination, and because of the graciousness of my colleague, it went to the select committee on the Ombudsman. I had no sense that necessarily the select committee on the Ombudsman would be the body which should carry it out. I never did have that sense. I always had the concern that the regular committees of the assembly should be dealing with the regular world of the province, but I wanted to get at a different vehicle.

Mr. Shymko: What would be your objections to this particular select committee dealing with this area of concern in an expanded mandate, since my understanding is we are a vehicle of the assembly? Any specific reasons why?

Mr. Renwick: Only the confusion, and the burden of work. It has been my sense that this committee has a heavy burden of work. It is an important committee and it was called into existence to deal with the creation of the new Office of the Ombudsman, which is a territorially limited operation. It would make much more sense to me that we do not pretend that this select committee, or an equivalent standing committee, should be dealing in the area which I am concerned about, which is basically regular internal Ontario matters of one kind or another. I think there is something to be said for a uniquely distinguishable body.

Mr. Shymko: I just want to comment that Mr. Lawlor certainly convinced me that this committee would not have enough time in terms of its work to do--

Mr. Renwick: Mine was only a suggestion as one of the things that you might consider in developing a method of dealing with the question.

Mr. Philip: I wonder if you can tell me what you see as the procedure, the typical procedure in dealing with a particular human rights issue. If we did have a Speaker's committee, then I assume that the Speaker would relate directly to the Secretary of State for External Affairs or he would relate to the parliamentary



associations or he would relate directly to the United Nations, or is there a division there?

One of the things that I found very refreshing in your remarks was that I think it was a comforting rebuttal to a few of the things that made me very anxious in regard to what Mr. Flis said this morning, that somehow provincial parliaments did not have jurisdiction over these matters or that certain bodies should watch that they do not step on other jurisdictional toes, namely, those of the federal government. Indeed, I think some of your remarks this afternoon would make a good introduction and justification for our report and I think we might look at that in the drafting.

What is the role then, that the Speaker, after a resolution had been passed in the House, would report on certain matters to the Minister of External Affairs or would report to the Speaker of the House of Commons, or how do you see this operationally?

Mr. Renwick: I am sure other members of the committee could add to the ramifications of it, but it did strike me that the Speaker, by virtue of his office, is in touch with or has avenues of communication with all of his fellow Speakers throughout the Commonwealth and throughout the Inter-Parliamentary Union and all of those other bodies which exist. So this being his committee, if the committee then decided to take some specific action, one way in which this could be done would be simply through his counterparts in other parts of the world.

I think it would be an unusual situation for him to go ahead, as Speaker, and deal with the Secretary of State for External Affairs, for example. I think we should be talking in assembly terms and in the United Nations terms so far as the work of this committee would be concerned. I do not say that it would not be possible for the Speaker, in his capacity as Speaker of the Legislative Assembly of Ontario, to bring before the assembly in Ontario a specific resolution, for example, requesting the government of Ontario to communicate with the Secretary of State for External Affairs on such and such a matter. If it were an urgent matter or a matter of life and death or a matter that could be best dealt with in that kind of term, then I think it should come through the assembly to the government and the government should be making the request on the authority of the assembly.

Mr. Philip: Following your earlier arguments, would you see any instances in which, because of the need for haste, and we were told in some instances the moving quickly is the difference between saving someone and not saving him. Would you see any instances in which the Speaker of a provincial assembly, of a committee like this, would communicate directly with the consulate or the authorities of another jurisdiction, a foreign country?

4:10 p.m.

Mr. Renwick: Assuming that it was within the mandate which is established for the committee, then if the committee meets, makes a resolution that directs the Speaker and the Speaker accepts the direction to communicate directly with a particular

ambassador from another country to express on, say, a question of conscience about a particular person in an urgent sense I do not see any reason why that should not be done, always with the knowledge that a report of this committee would actually have to come to the House.

There would be emergent situations where I think it would be consistent with the terms of reference of such a committee and its mandate from the House to speak out. For example, it might have been that if there had been such a committee--not that it would have stopped the event--when the former Prime Minister of Pakistan was about to be executed and many people were raising their voices and it became urgent to do it, I think a communication from the Speaker of this assembly to the ambassador of Pakistan in one instance or to the Speaker of the assembly, if there still is one in Pakistan, would have been a valuable avenue of communication.

I emphasize this all within the framework that I do not have any great expectation that we are going to accomplish a lot, but we will have added a significant voice, I think, to this basic concern about what happens to people like ourselves if we have the misfortune to be under oppressive regimes in other jurisdictions.

Mr. Philip: Would you agree that pressure from outside countries has more often been successful when they are dealing with individual persons who are being persecuted rather than with groups of persons, and, if so, would you suggest that this committee deal with individual cases rather than groups of cases?

Mr. Renwick: Certainly my own personal view, and I think it was implicit in my remarks, is that I am talking about human, civil and political rights in their elementary individual sense--that is, about individuals. Without intruding on Amnesty International, as I said, I think that is a very good model. It should not be slavishly adopted by such a committee, but I think there would be many situations where a declaration about a prisoner of conscience adopted by Amnesty International, a statement by a Speaker's committee of this assembly in its individual elected representative sense would be most helpful.

Mr. Philip: Would you confine the work of the committee to the two categories that were suggested by Mr. Lawlor, or would you broaden the focus of the committee?

Mr. Renwick: Generally I think I would accept what Mr. Lawlor has said. I would perhaps come at it a little differently in that this committee is not designed to conduct surveys of incidents all over the world but simply to try in a consistent way to intervene where it is urgent and important that such an intervention be made.

With the degree of political oppression in the world there is obviously a degree of selectivity about what one does. You can't solve everything. But I do not think you should be deterred or we should be deterred in the assembly simply because we can't solve all the problems.

Mr. Philip: As a second point, Mr. Lawlor suggested a



separate report on this particular area. In your suggestion it would be a report of a separate committee and an interim report on the individual problems where there is some pressing need. Would you see the provision in that of minority or dissenting reports within that framework? Or do you feel the committee must reach some kind of consensus or the report will not have any effect whatsoever?

Mr. Renwick: That is a tough question. I would be inclined to think it should not be a vehicle for importing into Ontario the animosities of abroad. Therefore, I would tend to think the committee should establish as its main method of operation a consensus operation; in other words, nonpartisan in the broad sense of that term.

Mr. Philip: I do not know of any instance where this has been done, but would it be a useful vehicle to setting up in the structure the provision that no minority reports could be filed and, indeed, that only consensus reports could be tabled?

Mr. Renwick: I would be inclined to think that would be a useful guideline. I am not sure whether it would have to be so firmly established, but I think that would be the best way to deal with it. It is, in a very real sense, an effort by this assembly to speak with a single voice on particular matters of elemental infringements of civil and political rights.

Mr. Philip: I am concerned in that I would not want to see this type of committee end up reflecting some of the political disputes that are happening in many of the very countries that--

Mr. Renwick: No, you could not. I think anyone who read either Mr. Grossman's or Mr. Rotenberg's comments in the original debate would clearly understand that there would be a great deal to be said for a rule of unanimity or consensus.

Mr. Philip: Do you see this Speaker's committee that you are suggesting dealing only with external civil liberties issues, or would you see it as also having within its mandate the dealing with of human rights issues that do not fall either under the Ontario Human Rights Commission or under the Ombudsman's jurisdiction in the province?

Mr. Renwick: I saw it as entirely offshore Canada. I tried to state in my remarks why. I was not trying to be self-righteous, to say that we are perfect here or anything such as that, but that there are many avenues available within Ontario. Whether or not they are used as fully as they could be, or whether or not we are as aware of them as we could be, there is the legitimate structural institutional world in which we live in Canada which has to act in those situations.

It is quite legitimate if somebody else says, "Well, why are you in Ontario doing this to us here when you are not looking after so-and-so in Ontario?" That is fine; that is part of the mutuality of accepting international covenants.

Mr. Chairman: Are there any further questions?

Thank you very much, Jim, for appearing before us today.

Mr. Renwick: I enjoy being on both sides of the table.

Mr. Chairman: We still have a few minutes before adjournment. Is there anything that anyone may want to bring up now?

Mr. Cooke: I should bring this to the attention of the committee; it was brought to my mind this morning when, as a whip for one of the parties, I got a request on my desk from the pension committee to have an extra sitting. The procedure that has been followed has been that schedules are struck for committees. If those schedules in the times that the House is not sitting are to be changed or added to, all three whips for all three parties have to agree to that change in schedule.

4:20 p.m.

When the pension committee decided it wanted to have an extra sitting, before they scheduled and agreed to that extra sitting there was a unanimous decision. In other words, several dates were looked at until they could come to a date when every member of the committee could attend or if there was a member who was not really concerned whether he or she would be absent, and that date was accepted.

I spoke with our House leader and then later this afternoon I spoke with Jim MacKenzie, in the government House leader's office, who indicated this procedure would also have to be followed for this committee.

I would like to indicate to this committee that I think we should look at an alternative date to next week. With only two committee members voting, as whip for my party I simply couldn't agree to this committee sitting next week.

Mr. Mitchell: Mr. Chairman, I gather what we are facing here is some form of parliamentary veto that is allowed for. I suggest it was clearly indicated yesterday the commitments that most of us have given. All I can suggest to you is that you as chairman will have to ascertain whether there is another time available for sitting. At this moment I cannot give a commitment to any period other than what we had agreed upon.

Mr. Cooke: Rather than sounding like it's a veto, I think there has to be a process in place for when members schedule their lives around a committee. First, we had our leadership convention; so there was no opportunity for me to take a vacation. Then I scheduled my vacation for the week right after the Ombudsman committee only because this committee was sitting this week.

I am not trying to be dictatorial or anything. I just think it is a procedure that was put into place for the protection of all three parties.



Mr. Mitchell: I will change the word from "veto" to "procedural" or whatever.

Mr. Cooke: I do have some suggestions. There is still the option of meeting this Friday, there is the option of meeting the day before the House comes back into session or there is the option of meeting the week of the February 22. I don't know how that fits into everyone's schedule.

An hon. member: It doesn't.

Mr. MacQuarrie: That justice committee is already scheduled for the day before the House sits, is it?

Mr. Mitchell: The justice committee is sitting the third, fourth and fifth. We are having some additional meetings the first and second. The only day left is that Monday before the House comes into session. As we discussed yesterday, a lot of us will be bringing family down for the opening of the Legislature. I only had the Wednesday and the Thursday that were available to me next week.

Mr. Treleaven: Mr. Chairman, is Mr. Cooke correct in his statement?

Mr. Chairman: I will have to refer that to the clerk.

Clerk of the Committee: In the substance that each whip exercises an effective veto over additional days beyond those agreed to in the previously published schedule, yes, that is true. The wording of the motion is such that I would interpret it--and it traditionally has been interpreted--that each whip on behalf of his party exercises an effective veto over additional meetings.

Mr. Treleaven: Are you referring to the whip of this committee or the whip of the House?

Mr. Chairman: The whip of each party.

Mr. Treleaven: What was the published resolution of the House? Could you read it, please?

Clerk of the Committee: Mr. Chairman, there was a resolution put by Mr. Wells on December 18, reading, I quote: "The select committees meeting during the interval between the first and second sessions of the thirty-second parliament do so in accordance with the schedule of meetings agreed to by the committee chairmen and the three party whips as tabled today." That schedule showed this committee to be meeting this week only.

Mr. Cooke: So that does include this Friday.

Mr. Chairman: I think the schedule that was circulated only indicated the three days.

Mr. Cooke: That was the schedule that was circulated in our caucus but maybe it was not in the others, I don't know.

Mr. Mitchell: That was in fact the original schedule that was set or circulated by the individual whips, but the secretary of the committee further circulated a timetable showing Tuesday, Wednesday and Thursday, and it was based on that final circulation by the clerk of the committee that others of us had made previous commitments.

Mr. Treleaven: Mr. Chairman, I would move that both schedules be adhered to--I presume we have no latitude with regard to the first, but we do with regard to the second--and that we deal with whatever we can deal with in the three days allotted, and that will be that.

Mr. Philip: I do not know what you are moving, I am sorry.

Mr. Mitchell: He is moving that we--

Mr. Treleaven: That we sit three days, Tuesday, Wednesday and Thursday of this week, and that on Thursday at 4:30 p.m. we get up and go our separate ways, and we have fulfilled our duties to this assembly.

Mr. Cooke: So you are suggesting that the South African trip not be dealt with?

Mr. Treleaven: I am suggesting that we sit for three days.

Mr. Cooke: The implications of your motion are that South Africa not be dealt with.

Mr. Treleaven: No. Mr. Chairman, I have no implications to my motion. My motion is very simple: Tuesday, Wednesday and Thursday till 4:30.

Mr. Cooke: The implication of your motion is that the Ombudsman would not be able to appear before us to deal with the South African trip.

Mr. Treleaven: I have no idea what we can carry out in these three days.

Mr. Cooke: It has already been explained to you, when we dealt with this the first time, that the Ombudsman was not available Tuesday, Wednesday or Thursday; so I think you understand the implications of your motion.

Mr. Mitchell: Mr. Chairman, I must interject at this point. The committee yesterday, prior to Mr. Cooke's arriving in attendance at the meeting, had agreed that we would sit to discuss that very matter he is talking about next week, and it had been done at that time, I believe, unanimously. I need say no more.

Mr. Cooke: I think the motion was actually put, and I came in when the motion was being discussed. But in any case, whether I was on this committee or not, the letter from the chairman would still have to come to me as whip.



Mr. Shymko: I have the same problem on February 17, but I was bound by the wishes of this committee. As I have indicated, the committee decided there would be no way you would be changing that date. I simply want to indicate that the presence of the Ombudsman may not be something that is absolutely required. We have a communication from the Ombudsman's office, a letter from him addressed, I believe, to the chairman of this select committee.

If the committee decides to discuss this particular issue--and my understanding was there was no hesitation to discuss the trip of the Ombudsman to South Africa, or at least I had no impression there had been any--perhaps within the time frame allowed by the House, to discuss this if possible on Thursday, could we take a look at the timetable and who else is to appear and try to fit this in?

Mr. Chairman: I think we are dealing with a resolution of the committee. As Mr. Mitchell mentioned, we passed a resolution. I think it was not quite unanimous--of course, Mr. Cooke and perhaps Mr. Philip; I do not recall the details--but it was passed by this committee that we would sit on February 17 to deal specifically with this matter, and my personal feeling is that we should leave it that way.

Mr. Philip: I recall voting against it.

Mr. Chairman: All right.

Mr. Philip: But even if it had been so, the problem that you face, Mr. Chairman, is the same problem I faced when I was chairing a committee; that is, unless you get the House leaders' consent--what that means is, unless you get the consent of all three parties--you just do not sit, and that is the problem you have. It is academic to say who is not going to be here.

Mr. Chairman: I want to say that we are almost at our deadline point here. It is the wish of this committee to have the Ombudsman appear before us to discuss the question of the South African trip, and it is the wish of this committee, as indicated by a majority vote, that this would take place on February 17. For whatever reasons, if a party whip decides that is inappropriate and decides to exercise his--if you want to term it a veto, so be it, it will just be unfortunate that we shall not be able to carry out the meeting with the Ombudsman.

4:30 p.m.

Mr. Philip: May I make a suggestion, Mr. Chairman? Looking at the schedule, we do have Thursday morning open. I realize that it is short notice to the Ombudsman, but he is back in town, and he obviously has put in some thought on this matter, otherwise he would not have written such a long and detailed letter.

It seems to me that, in order to get this report out, we are going to have to appoint a drafting subcommittee that will meet with the clerk, with counsel and with you, Mr. Chairman, and bring back a written draft for consideration of the whole committee

anyway. We are simply not going to be able to write our report tomorrow.

If we could invite the Ombudsman to appear tomorrow morning, and then we hear the Interchurch Committee on Human Rights that is already scheduled tomorrow afternoon, I don't see us dealing with the Ombudsman for more than a couple of hours on this matter anyway. There are all kinds of other issues that may spring out of it, but we can deal with those at another time. He is scheduling his rationale for trips and so forth. There are a number of questions we may want to go into. We do not have to deal with them tomorrow.

If we are fairly specific, we can deal just with the South African issue tomorrow, and then tomorrow afternoon go on, and then perhaps strike a subcommittee to put something down on paper that we could report back to the committee. That subcommittee could meet on February 17, with the understanding that they have no authority to do anything that is not approved by the whole committee and reported back to the whole committee. That means then that some of us would sit on February 17, but we would be dealing with this matter rather than the South African matter.

Mr. Chairman: I don't know what latitude I have as chairman, but Mr. Treleaven indicated that I am probably going to be challenged at some point in the deliberations, possibly by Mr. Treleaven. Anyway, I am going to rule that this committee has already decided upon a date, by unanimous vote, and that we are going to carry on in that manner. I am not going to open it to debate. If you want to challenge that ruling, fine.

Mr. Cooke: I am not going to challenge it. I do want to put something on the record and that is that, after talking to both people within your House leader's office and people in my House leader's office, I have been advised that this type of thing simply does not happen.

It is very unethical that a committee operate in the manner it is operating. If your party had the same problem, I think we would be open to some kind of a compromise, and that is all I am asking. If this is the way the committee wants to operate, then the Ombudsman's committee is not going to operate in a very appropriate, nonpartisan way.

Mr. MacQuarrie: February 17 was selected on the balance of convenience to all the members who were--

Mr. Cooke: The pension committee had exactly the same problem, and they searched around and found a date that was convenient for all members. If it means we have to meet in the first week of March, then we will have to meet in the first week of March.

Mr. MacQuarrie: We examined the calendar from now until when the House reconvenes to all intents and purposes, and February 17 seemed to be the date that was most convenient to all concerned.



Mr. Cooke: This has never happened in a committee--

Mr. Philip: Maybe you did not understand my proposal because I think, if you think about the proposal I am making, it meets the needs of everybody.

Mr. Chairman: It doesn't meet my needs. We are past our adjournment time. We indicated yesterday when we were setting out the ground rules that we were going to adjourn at 4:30 unless we have unanimous approval.

Mr. Philip: I move the Ombudsman be invited to appear at 10 o'clock tomorrow morning.

Mr. Treleaven: We have a motion on the floor. Mr. Chairman. Are you ruling that my motion is out of order?

Mr. Chairman: That's correct. I am ruling that we will abide by the motion that was passed yesterday.

The committee adjourned at 4:34 p.m.

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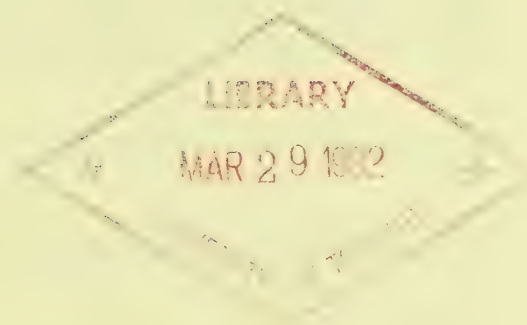
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SELECT COMMITTEE ON THE OMBUDSMAN

HUMAN RIGHTS

THURSDAY, FEBRUARY 11, 1982

Morning sitting





SELECT COMMITTEE ON THE OMBUDSMAN

CHAIRMAN: Runciman, R. W. (Leeds PC)  
VICE-CHAIRMAN: Miller, G.I. (Haldimand-Norfolk L)  
Boudria, D. (Prescott-Russell L)  
Cooke, D. S. (Windsor-Riverside NDP)  
Gordon, J. K. (Sudbury PC)  
MacQuarrie, R. W. (Carleton East PC)  
Mitchell, R. C. (Carleton PC)  
Philip, E. T. (Etobicoke NDP)  
Piché, R. L. (Cochrane North PC)  
Shymko, Y. R. (High Park-Swansea PC)  
Treleaven, R. L. (Oxford PC)  
Van Horne, R. G. (London North L)

Clerk: White, G.

Staff: Bell, J., Counsel to the Committee

LEGISLATURE OF ONTARIO

SELECT COMMITTEE ON THE OMBUDSMAN

Thursday, February 11, 1982

The committee met at 10:17 a.m. in room No. 151.

HUMAN RIGHTS  
(continued)

The Vice-Chairman: Gentlemen, I think I see a quorum.

Mr. Piché: There is no question about it; you have a quorum.

Interjections.

An hon. member: What is a quorum?

The Vice-Chairman: Seven.

An hon. member: There are more than seven people in the room.

The Vice-Chairman: Members of the committee, again I see a quorum, and I will call the committee to order. Graham, what is on the agenda this morning?

Clerk of the Committee: Mr. Chairman, the original intention was to use this time for an in camera discussion of the principles and ideas underlying the report to the House on the human rights resolution. If we are to go in camera it will require a motion. I have spoken to the Hansard people, and they are prepared, if a motion goes forward, to provide us with their service and give us a single copy only of the transcript for reference purposes when the report is actually being drafted. But that would require a motion as well.

Mr. Boudria: Mr. Chairman, I would like to move that we go in camera.

Clerk of the Committee: And that Hansard provide a single copy of the transcript.

Mr. Boudria: Oh, I thought you needed a separate resolution, you said. Fine. Then we will just add to the same motion "and that Hansard remain to provide us with a single copy."

The Vice-Chairman: Do we have a seconder?

Mr. Treleaven: Excuse me, Mr. Chairman. I was half asleep. It's very early in the morning for some of us, the country boys. What subject were you on that Mr. Boudria's motion refers to?

Mr. Piché: And is it necessary?



Mr. Philip: Carried.

The Vice-Chairman: It is to decide on the direction that we want to go from the information that has been provided and do we want to go in camera to write--

Mr. Philip: To write the report. That's basically--

The Vice-Chairman: A motion has been put to the floor that we go in camera and that Hansard remain as recording and provide one copy for our use.

Mr. Treleaven: Fine. Thank you.

The Vice-Chairman: All in favour?

Mr. Piché: The question I just put forward is whether it is necessary to go in camera. We should always go in camera when it's absolutely necessary, especially in the job we are doing here.

Interjections.

Mr. Piché: Mr. Chairman, all I am looking for is some explanation of why it is being suggested that we go in camera for deliberation this morning.

10:20 a.m.

Mr. Bell: Mr. Piché, if I can assist, it has been the practice of this committee since its inception, with one exception which I will tell you about in a minute, when it deliberates on its report, to go in camera. That's the general practice of most committees, standing and select, that I have had anything to do with or know anything about.

The one exception this committee made was last September after it considered the Ombudsman's last report. Some part of its report was deliberated on publicly, and I might say, speaking for myself, that there were some unfortunate ramifications or repercussions. The transcript was made available, it was of course read by parties affected by the report and in my view it was misunderstood to the extent that there were communications passing between the Ombudsman's office--the Ombudsman in particular--and this committee as the report was being written commenting on what was said by certain committee members and perhaps by me as the report was being considered.

It is just a matter of practice that, with everything that has to be done in formulating the consensus for a report, it can be done much more efficiently and in a shorter period of time in camera than in public. It is a generally accepted practice recognized by everybody in this building who has anything to do with or is in any way affected by committees.

I should also say that at the very beginning, when the committee's second report was deliberated on, Mr. Maloney asked for permission to be in attendance with some of his staff while the committee's report was being deliberated on, either publicly

or privately. I am not sure whether it is referred to in the committee's second report specifically, but that request was resoundingly rejected for a lot of reasons, not the least of which was that it was unprecedented for nonlegislative members other than staff to have anything to do with the writing of a committee's report. That is a little off topic, but it is just a further example of how the committee views its function in report writing.

Mr. Philip: I think there is a real value to going in camera when writing the report. Often a member will be trying to find a solution, he may be thinking out loud and may change his opinion. I think that is a legitimate process. By being in camera it tends to lose the partisanship or the worry that you may say something and then later change your mind and look foolish on the record or something like that. So it is a real advantage, being a nonpartisan committee, to do it that way.

If I may, though, Mr. Chairman, before we vote on this and go in camera: We recognize that we cannot, for very legitimate procedural reasons, meet on Wednesday to deal with the South African trip. The procedural reasons are that, unlike standing committees, because we do not have the option of substitution, there has been the precedent that unless everyone can meet on a particular day this committee will not sit if that proposed sitting was not in the original agreed-on schedule of the House leaders. I think it is a good principle to follow. This time it happens to affect one of our members; on other occasions it has affected members of the other parties.

At the same time, I think members of all three parties have expressed concern that they would like the Ombudsman to appear to answer questions on his trip and perhaps on the rationale for some of his other trips: where he is going and how the taxpayers' money is being spent. Therefore, since the Ombudsman's trip would be at least three weeks after the House reconvenes, I wonder if I might suggest that this committee request the permission of the House to sit expeditiously, the moment the House reconvenes, and to meet with the Ombudsman at that time. That would still give us an opportunity to make our concerns known to the Ombudsman. He would still have time to change his mind, if he so desired, having heard the input.

It would simply mean that we could meet perhaps half a day for an hour, an hour and a half, two hours, whatever is required, with the Ombudsman, as our first activity after the House reconvenes. That means nobody is going to have to come at a time that is inappropriate for them or when they may have scheduled something else.

I realize there is a motion already on the floor, but I wonder if Mr. Boudria would be kind enough to stand down that motion for a few minutes so that I could move that motion. Or, if he would prefer, I could simply give intention of moving that motion this afternoon.

Mr. Boudria: In view of the fact that we would be moving in camera right after my motion, I have no objection to waiting



for a few moments to deal with this one first, because I realize it will be a procedural impossibility to introduce it after we go in camera. So go ahead.

Mr. Philip: I move that the chairman of our committee inform the House leaders of our desire to meet for a half-day session with the Ombudsman as soon as possible after the reconvening of the House.

Mr. Piché: Personally, I have no objections to this motion; in fact, I would vote in favour of it. I think that is a direction we should take. However, should we check on the legality of this motion, since we dealt with this matter yesterday? Can a motion, such as presented by Mr. Philip, be brought back for us to deal with again today at this session? I am trying to think of what I read in the rules and regulations of committee, and I cannot sort out in my mind if we can deal with a motion a second time, after it has already been dealt with, and since some of the members who voted for or against the motion are not at the meeting today.

Mr. Philip: I just checked it out with the executive assistant to the government House leader, and he seems to think it is in order. But our clerk can best inform us on that.

Mr. Bell: Mr. Piché, for whatever weight counsel to a select committee has, there is absolutely nothing preventing a committee, so long as its meeting is duly constituted with the minimum quorum, as this one is, from putting a motion of this type before itself for consideration, particularly when--and I heard this for the first time from Mr. Philip--it seems that because of the process in place among House leaders you may only meet on the dates fixed in the schedule and you are not going to meet on February 17. If that is a fait accompli then what it does is totally override any motion that this committee may have already passed. Therefore, it is a new ball game.

Mr. Piché: What you are saying is that the first motion was out of order, since we did not have the approval of the House leaders.

Mr. Bell: It was in order but circumstances have rendered it ineffective, and to the extent that there was a ruling of the chair yesterday, those same circumstances have rendered that ruling ineffective to whatever effect the chairman's ruling had. The short answer is that there is nothing preventing this committee from considering the motion that is before you.

10:30 a.m.

I just throw something in the hopper for your consideration. It is a concern to me, and has been since it appeared yesterday, that the question of your meeting with Mr. Morand might be jeopardized.

I remind committee members that the whole thing started on a point of privilege of one of your members, Mr. Johnston. On December 16, when Mr. Johnston rose on a point of privilege, what

he did in the first instance was to ask the Deputy Speaker, who was in the chair at the time. Because the Ombudsman is a servant of the Legislature and because he reports to the Speaker, he asked that the Speaker speak to the Ombudsman and discourage him from making the trip.

So remember, that is the first articulation of concern and the first request. What the Speaker did immediately was to say that he thought the appropriate action would be through the committee of the Ombudsman so that all members might reflect their concerns directly to him.

I do not want to get into a discussion or analysis of what that is, or whether it is a ruling of the chair concurred in by the House. Whatever it is, it is a commencement of a process respecting a point of privilege, and that is of critical concern, and ought to be, to all members of the House. So anything this committee can do to give effect to the continuation and completion of that process ought to be your first concern.

To further assist you, this committee on at least three occasions that I can recall has obtained specific permission of the House leaders to sit concurrently. It has also, as referred to by Mr. White yesterday, sat while the House is in session but not at the times the House is sitting--for example, on a Monday morning or a Wednesday evening--without permission of the House. I should say that the thinking is that select committees do not require permission of the House to sit on occasions when the House is not.

I was associated with a select committee in 1973 that sat for almost six months, three and a half months of which was when the House was in session; and it sat, without permission, on Wednesday mornings and some evenings. So if you had a concern as to whether any request would be granted, it has already been granted on other occasions. I think in this case it would be appropriate to seek specific permission; so I would urge members of the committee to give this motion favourable consideration.

The Vice-Chairman: Are the members who are coming in late aware that the motion has been brought forward?

Mr. Mitchell: Let us hear the motion, if you would, Mr. Chairman.

The Vice-Chairman: Graham will read it.

Clerk of the Committee: Mr. Philip has moved that the chairman of the committee request the House leaders to make arrangements for this committee to meet with the Ombudsman for half a day as soon as possible after the reconvening of the House.

Mr. Piché: Do you want to specify the half day, or just to meet and leave it open?

Mr. Mitchell: Mr. Chairman, on the very first day of this session, when we were presented with a number of things that this committee has to discuss and so on, I suggested that the



chairman seek the approval of the House leaders to sit while the House is in session. So at this time I cannot object to the way the motion is read, because it is basically one that I put myself, albeit not formally.

Mr. Shymko: Mr. Chairman, I feel the whole relevance of the decision and the discussion of the trip will be offset by another two or three weeks. To me it makes more sense to discuss this and to have the Ombudsman appear before this committee this week for half a day, within the time frame allocated by the House to this committee. That is a question of half a day. My understanding is that the Ombudsman is in Toronto and that he is available.

There may be some conflicts with some members. If we could once again address the members of this committee who have indicated they had a conflict, maybe a meeting at 9 o'clock on Friday morning for two hours would solve this, rather than postponing it for three weeks. As I indicated, simply timewise the issue will lose the nature of immediacy that is before us at present, and personally I would not drag this on for another three weeks.

Mr. Mitchell: Mr. Chairman, I suppose it is going over old ground, but I have every respect for the comment Yuri has made. Frankly, it is one I share. I think we have to deal with this particular situation. If it is going to be dealt with by this committee, we have to deal with it before the trip occurs. However, I think it was clearly pointed out that there are at least three of us sitting on this side of the table who cannot be here on Friday, because we adjusted our schedule based on the timetable that was presented to us and we cannot substitute on this committee.

The very argument that Mr. Cooke has put forward is that it is something that all members, those who are on this committee at least, should be a party to. Just speaking to the particular side that you are talking about, Yuri, I could not agree with you more but, unfortunately, based on the schedule that was presented to us, we have established and committed ourselves to other things which at this point in time, quite honestly, are extremely difficult for us to get out of.

Mr. Shymko: My understanding of the schedule was that it included Friday. Did it not include Friday?

Mr. Boudria: Friday was a travel day.

Mr. Shymko: It was a travel day? I see. My indication--

Mr. Mitchell: For the first schedule, Yuri; you are quite correct.

Mr. Shymko: --was that most members would have planned their own plans and projects during that week to allow at least for a half a day or maybe a few hours on Friday. When I mentioned Friday, I was not being unreasonable. I just thought some of us might have taken this into consideration.

Mr. Mitchell: The first schedule, Yuri; you are quite correct. The very first schedule we got showed a Friday sitting.

The Vice-Chairman: Can I have a little order? Is there any further discussion? Graham would like to make some comments.

Clerk of the Committee: Mr. Chairman, there is a point that I think I might clarify the two schedules. The schedule approved for this committee to meet included all five days. It was a permissive schedule, and the committee could use some or all of those days as it saw fit.

I do not like putting words in his mouth when he is not here, but I think this is an accurate reflection: When the chairman and I were discussing the schedule for this week, at that point the Ombudsman was not scheduled to return until some time later in the month.

Since we thought we could accomplish the human rights resolution business in three days, and since members do not like to sit on Fridays, we effectively ruled out Friday as a meeting day. Although we did not formally circularize it, anyone who called either the chairman's office or myself was informed that the committee would not be meeting on the Friday.

The Vice-Chairman: I think Mr. Boudria had the floor.

Mr. Boudria: Mr. Chairman, if it is not proper for us to sit next week because one member cannot be here, surely it is not proper for us to sit this week when five of us cannot be here. We just discussed that Mr. Cooke will not be here next week and therefore we should not sit because of that reason. Well, there are five of us who cannot be here tomorrow; so surely that should more than offset that concern.

Mr. Philip: I am in agreement with you but for different technical reasons.

Mr. Cooke: Actually, if we meet the first week, there will be other members of the Legislature who will be around who might want to participate. However, I would have been very open to a compromise of a meeting next week had the Ombudsman still been in Fiji and we could have all travelled to Fiji to talk to him.

The Vice-Chairman: Is there is any further discussion needed? Mr. MacQuarrie?

Mr. MacQuarrie: Mr. Chairman, I am trying to look at it from a very practical point of view. Certain members have expressed a deep interest in the Ombudsman and the proposed trip that the Ombudsman intends to take to South Africa. If we leave it until after the House is in session, we are into the week of March 8. The first few days of the session are usually pretty well filled.

Looking at it from the point of view of the Ombudsman and those who might be accompanying him, and I understand there was at least one from his staff, the registration for the institute is to



take place on March 29, and I don't think travel arrangements to South Africa are the easiest things in the world to make. If at all possible, I would like to see some generally acceptable date between now and when the House opens, rather than after.

10:40 a.m.

The Vice-Chairman: Wednesday morning after the House opens would seem reasonable to me; there shouldn't be that much on. But again we can leave it up to the House leaders. We do have a motion on the floor; it has been discussed properly and I think we are ready to vote on it.

Mr. Shymko: Could you read the motion again?

Clerk of the Committee: Mr. Philip moved that the chairman of the committee request the House leaders to make arrangements for this committee to meet with the Ombudsman as soon as possible after the reconvening of the House.

The Vice-Chairman: All those in favour? Opposed?

Motion agreed to.

The Vice-Chairman: Now that we have that motion out of the way, can we carry on with Mr. Boudria's motion?

Mr. Boudria: Perhaps Dr. White could read it.

The Vice-Chairman: For the benefit of the members who came in after this motion was put.

Clerk of the Committee: Mr. Boudria moved that the committee meet in camera but allow the Hansard transcription service to remain to provide a single copy of the proceedings for the benefit of the committee staff for report-writing purposes.

The Vice-Chairman: Is there any further discussion?

Mr. Mitchell: I am asking this by way of enlightenment, but are we still hearing testimony this afternoon?

The Vice-Chairman: There will be an open meeting this afternoon. That is just to discuss what has already been put before us to formulate--

Mr. Mitchell: I am suggesting that we really cannot prepare a report before we hear people.

The Vice-Chairman: I don't think that is the intent. It is just a matter to get to discussion and decide how we want to deal with it.

Mr. Mitchell: I don't object. All I am saying is we cannot appear to be writing a report before we have heard the people.

Mr. Bell: No. And, Mr. Mitchell, that is not the purpose

of the meeting this morning. It is frankly to take inventory to see what we have heard so far. I think it is fair to have the members express views collectively or individually and see whether there is a consensus up to now.

What is apparent is that the meeting time of this committee after today will be at a premium. We will have to grab hours. We are not talking in terms of days or half days. Therefore, any direction you can give your staff in respect of where you are now in respect of the writing of the report would be very valuable. If we have enough time this afternoon, it might be appropriate to take stock again for 10 minutes in view of what has been heard.

Mr. Mitchell: Call the motion, Mr. Chairman.

The Vice-Chairman: All those in favour of the motion? That was split. Do you want to read the motion again?

Mr. Mitchell: To sit in camera this morning, basically that is it?

The Vice-Chairman: Yes. And Hansard will record one copy and present it to the staff. All those in favour?

Motion agreed to.

The committee met in camera at 10:45 a.m.





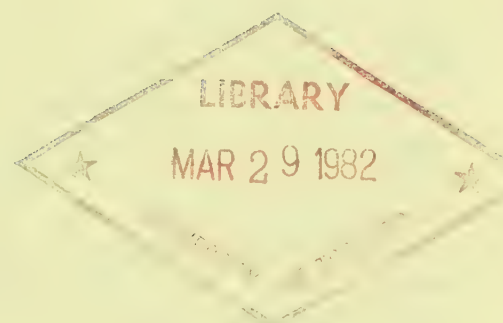
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SELECT COMMITTEE ON THE OMBUDSMAN

HUMAN RIGHTS

THURSDAY, FEBRUARY 11, 1982

Afternoon sitting





SELECT COMMITTEE ON THE OMBUDSMAN

CHAIRMAN: Runciman, R. W. (Leeds PC)  
VICE-CHAIRMAN: Miller, G.I. (Haldimand-Norfolk L)  
Boudria, D. (Prescott-Russell L)  
Cooke, D. S. (Windsor-Riverside NDP)  
Gordon, J. K. (Sudbury PC)  
MacQuarrie, R. W. (Carleton East PC)  
Mitchell, R. C. (Carleton PC)  
Philip, E. T. (Etobicoke NDP)  
Piché, R. L. (Cochrane North PC)  
Shymko, Y. R. (High Park-Swansea PC)  
Treleaven, R. L. (Oxford PC)  
Van Horne, R. G. (London North L)

Clerk: White, G.

Staff: Bell, J., Counsel to the Committee

Witnesses:

From the Taskforce on the Churches and Corporate Responsibility:  
Anthony, Reverend T.M.: Chairman; Director, National  
and World Program, Anglican Church of Canada  
Greene, B.: Staff Officer, Human Rights and International  
Affairs, United Church of Canada  
Pratt, R.: Co-ordinator

From the Inter-Church Committee on Human Rights in Latin America:  
Foster, Dr. J.: Chairperson

LEGISLATURE OF ONTARIO

SELECT COMMITTEE ON THE OMBUDSMAN

Thursday, February 11, 1982

The committee resumed at 2:13 p.m. in room No. 151.

HUMAN RIGHTS  
(continued)

The Vice-Chairman: I think I see a quorum. We would like to welcome Dr. John Foster, Inter-Church Committee on Human Rights in Latin America; Ms. Renate Pratt, Taskforce on the Churches and Corporate Responsibility; Reverend Thomas M. Anthony, director of national and world program for the Anglican Church of Canada; and Bonnie Greene, staff officer, Human Rights and International Affairs, United Church of Canada.

We look forward to your presentation and hope it will be helpful to us in making our decision on how we should deal with human rights as far as the provincial government is concerned. Who would like to be the first to speak?

Reverend Anthony: I would, Mr. Chairman, thank you very much. I would like to give a little general introduction as to the reason why we are here. The Canadian Council of Churches, of which our denominations are members, received an invitation to consider a possible presentation to this committee on behalf of the kinds of concerns represented by our churches both nationally and in this region of the country.

Those of us who are before you today represent two ecumenical coalitions which have addressed, at a fairly deep level, concerns relating to human rights over a number of years on behalf of our church constituencies in this province and across the country. I chair the Taskforce on the Churches and Corporate Responsibility, which is one of those national coalitions. Both that coalition and the Inter-Church Committee on Human Rights in Latin America have been funded by our national church structures. The major churches contributing to and supporting the work have reviewed our work at regional levels and at national levels over the past almost a decade now.

I think you should be aware of the fact that we are not simply some fringe group, so to speak, on the edge of the life of the churches but are, in fact, speaking very strongly out of the major policy concerns and programmatic concerns currently of our churches both within this province and beyond.

I think it is also important to state at the outset that the kinds of concerns and focuses we will be presenting to you today are selective. They are selective for two reasons. In the past year, for example, the country of Poland has been very much visible in the minds and hearts of many of us for the violations of human rights that are now occurring once again on a massive scale there. That is a very recent occurrence, of course, and strikes very deep at the chords of concern within our own



constituencies as Christian communities in Canada, and internationally as well as nationally within this country.

It is a fact that there have been very few means by which voluntary organizations such as Christian churches in Canada and in Ontario can have any effective leverage on a situation such as the Polish situation. The one instance where we have been able to have some dialogue of a direct nature through our Taskforce on the Churches and Corporate Responsibility with reference to Poland, and we have had such dialogues both privately and publicly in recent months, has been with the Canadian banks who have more than a \$25-billion exposure, participating in loans to that extent with Poland.

I think you will find in the material we are submitting that the reason we have chosen to address the concerns over the past years with reference to southern Africa and Latin America is based on two factors. First, we have very strong direct linkages with the Christian communities in those countries going back over many years. So we have excellent sources of information, we have constant consultation, we have had many opportunities for direct exposure on the ground in those situations by Canadians representing our churches. Second, in all the situations we have addressed, the Canadian government or Canadian private sector interests have had significant involvements in the countries we have focused our concerns on.

We have seen ourselves as playing a role as intermediaries, if you will, between the more public concerns of human welfare within those situations, responding in large part to the human rights concerns addressed by peoples within those countries, including Christians and much beyond those Christian communities, and Canadian actors who have a significant leverage either politically, economically or socially within those situations.

We want to be very clear about that bias. It is a bias based on what we regard to be very real possibilities of playing a significant role in ameliorating, alleviating or removing the causes of very significant violations of human rights. That is not to be misconstrued as a bias that ignores or is slanted against the very unfortunate and massive violations of human rights in other countries where, in our view, voluntary organizations such as the churches have a very limited leverage on making any effective impact on those conditions.

We have two proposals to put before you today. One is a brief prepared in consultation between the churches with regard to violations of human rights, in South Africa particularly. One could speak also at great length about Namibia, but we have not particularly focused on that country, although it is a critical one at the moment. The other major presentation has in view a number of countries within Latin America with which we have had very deep and extensive involvement in recent years.

I would like to point out the timeliness of your concern and commend this committee and the Legislature for having struck the committee in the light of the kind of very visible and public debate that has been occurring within our country and now within

our province and at many other levels of our civic life with reference to these two areas of concern.

2:20 p.m.

The first has to do with the current debate in our national newspapers and media about policies towards southern Africa and Canada's role as a member of the group of five in terms of finding a just settlement to the Libyan situation, which is a critical role and one that will continue to be before our view and in our view as Canadians.

There has also been a recent visit by an MP to South Africa, his report and the debates around that report within his own party, within the public media and within the federal Parliament. For example, I would point out to you the letter from one of his fellow party members in this morning's Globe and Mail, Doug Roche, who is also a Christian leader of some standing within his own tradition.

The second has to do with the very direct involvements of our country with what is happening in Central America. Inco, which had the largest single Canadian investment and is a very significant corporation within this province, unwisely, in our view, made a decision to invest in a massive nickel operation in Guatemala within the last five years, six years at most, and has since written down and closed down that operation. There is a long story to be told about that. We have a good deal of information about it and have been dialoguing with that corporation for a number of years.

In our view, it is extremely regrettable that Inco ever decided to go in under the conditions it did. It has contributed nothing to the welfare of the Guatemalan population and in fact, we would argue, over the years simply created a continuation of the status quo or an escalation of the repression we are now seeing occurring within that country.

Finally, I think with reference to El Salvador we are viewing in our national level of policy-making a doublespeak. Our Secretary of State for External Affairs just yesterday spoke very strongly about Soviet intervention in Poland. Yet for the past 18 months, despite massive public pressure, of which we are very much aware, there have been more letters from constituencies across this nation opposing Canada's quiet diplomacy approach in this matter, opposing the fact that the minister and the Prime Minister have refused to oppose US intervention and continuing and escalating military aid and intervention in El Salvador.

Our government has a double standard operating. We oppose USSR intervention in Poland, yet we will not oppose publicly and internationally US intervention in Central America. We believe this is a matter of very grave concern to many Canadians, and we certainly feel within our own constituencies the support of the political representatives at provincial levels would be extremely important in this instance and in future instances of a similar nature.



It is for those kinds of reasons that we appear before you today. Ms. Greene will speak first about our brief relating to South Africa and then Dr. Foster about Latin America. We will try to be brief. We won't read them verbatim. There is a great deal of detail behind them. We would be happy to provide more information, and then we would hope to have a time of discussion and questions which may help elucidate some of the concerns.

The Vice-Chairman: Thank you very much. We will give you that opportunity.

Ms. Greene: I think the mandate of this particular committee relates to the issues that are raised in the brief, because in the South African situation what we find is an erosion of a development process that has been going on for a very long time, an erosion that has been supported by the legal system within South Africa and that has, in the view of the churches there and in the view of Canadian church people who have gone to South Africa to see the situation firsthand, produced a great deal of unrest and a cycle of responses to that unrest which escalates.

The more frustrated people are, the more they strike out against the underdevelopment of a particular segment of the population, the black population in particular, and the more that leads to detention, to imprisonment and eventually to the kinds of conditions that produce assassinations or the occasional blowing up of a railway that you will hear about in South Africa or the blowing up of a police station perhaps, which will be described then as a terrorist act.

But the church there has pointed to us that those kinds of eroding economic and social conditions for the bulk of the black population have created that kind of cycle that feeds on itself. As their economic and social situation deteriorates, people organize themselves, they express their unrest that they are a black and they resort to the only means that are possible.

It is out of that desire the church has in South Africa for a peaceful change rather than a violent revolution that the South Africa Council of Churches has called on Canadian churches. This is in part because we are linked through our Commonwealth history and because we are linked through our mission. It has called on us to use every means at our disposal to draw attention to the deteriorating situation for most blacks in South Africa and therefore to the growing danger that it poses, not only to southern Africa as a region but also to the entire world.

They also frequently call on other Canadian actors who would be present, besides the church, to review their presence there. They wish to test whether their thesis is correct, that their presence is an influence for liberalizing the situation in South Africa rather than a force for entrenching the current situation and therefore contributing to the escalating cycle of deteriorating economic and social conditions and responses back and forth on both sides.

They feel that unless that situation is dealt with quite dramatically and quite quickly we can only expect further

repression on the part of the officials in South Africa towards people who seek to redress the racial injustice as well as the social and economic injustice and to a growing violence in the society at large.

I would like to draw your attention to the brief itself and walk you briefly through that. I do not propose to read it; it is far too long.

If you look on the first page, paragraph four draws your attention to the fact that, in our view, the situation in South Africa is unique in the world, because racial discrimination has been reinforced by a legal system that has been very carefully developed since the Second World War. It is now a situation that makes it almost impossible for even the mildest form of dissent, even writing about racial discrimination in South Africa, to be undertaken in public.

If you look on page two, you will see a summary of some of the features of apartheid which might remind you of the kind of conditions you would experience if you were a black person living there. You would not be able to vote. Those who determine the laws would not have been people for whom you had voted. There is by no means any sense of democracy.

Even though as a black you would be in the group constituting 80 per cent of the population, you would have rights only to the least developed piece of land, only about 13 per cent of the land in South Africa. The white minority government has been attempting to consign the black South Africans to these places. And blacks have been regularly losing their citizenship, being denied citizenship, without having any recourse to an elected official to represent them. They do not have that right.

As a black, you would also be paying for your children's education; whites would not be. Depending on how well you have been able to get yourself into a job that might allow you to get a little more than subsistence level of income, you might find you were not able to educate your children to the extent that they would be able to get a job to survive anyway. You would not be able to afford it; it would simply be beyond your means.

You would find that your frustration would be quite high. You would find that if you formed a trade union you would be squelched at virtually every pass. You would also find that speaking out against apartheid or speaking for some kind of peaceful change would endanger you. We ourselves have been involved in interventions on behalf of numerous church people who have done nothing more. Let us say they felt that things had to change in South Africa. That has been considered a treasonous act.

The point of all this is that this is not just a product of personal racism on the part of individuals in South Africa. It is a political system and a political philosophy that establishes separate development. It reinforces that quite clearly and effectively by a system of laws. This has made South Africa a part of the world the international community has chosen to place some emphasis on, because it is symbolic of the very worst to which the human race could descend.



If you would turn to page four, I would like to draw your attention to some of those other actors to whom we are frequently called on by the churches in South Africa to speak.

2:30 p.m.

Mr. Bell: Excuse me, Ms. Greene. Would you prefer we held questions to the end? Do you have a preference?

Ms. Greene: It does not make any difference to me. Do you want to raise a question now?

Mr. Bell: I was wondering. About a year ago, the committee heard from two representatives of the International Commission of Jurists, one of whom was designated by that commission to attend as an observer at the Soweto trials. At the last moment, he was denied a visa. He said that in speaking within the context of the ICJ and concerns that they had, that was one of the ways in which that particular government dealt with the potential for criticism from without. They just denied persons access to the country.

Speaking from the experience of the churches or your personal experiences--and your brief does speak to it; it's really a matter of termination, if you will, of any association or relationship between the Legislative Assembly of the province of Ontario and that particular country--I am wondering what your views or comments are, if it was known to that particular country that someone from Ontario, a member of the Legislative Assembly, was going to attend and was going to be critical of its regime, how that government probably would react.

Ms. Greene: I would be very surprised if they got a visa to get in.

Mr. Bell: Assume he got a visa, assume he entered the country, and in his capacity as a member of the Legislative Assembly of the province of Ontario he publicly spoke in a critical way of the particular country's policies vis-à-vis blacks. From your experience, what would the government probably do?

Ms. Greene: Tom might want to speak to that, since Tom himself has been in and had precisely the kind of experience you are alluding to. Do you want to say something?

Mr. Bell: You were in South Africa and did speak out critically of their--

Reverend Anthony: I have been there twice. I went first in 1975 for a three-week period and travelled extensively with a group of five other Anglicans, three of whom are from Ontario, as I recall. We visited various parts of the country separately and wrote up a major report which became the basis for my church's national policy regarding South Africa which in effect was adopted by our House of Bishops and our National Executive Council and ratified by our General Synod in the period of 1977-1979.

I was back in 1980 for a major international consultation with the dioceses in southern Africa running from Mozambique to Namibia. I participated at that time just prior to the consultation, having spent a 10-day period within the republic, travelling extensively, meeting with corporate, union and other leaders.

I participated in a public service of witness against the arbitrary detention without charges of a former secretary to the South Africa Council of Churches and a former president of that council, a leader of a Congregationalist church, a so-called coloured person, a Reverend John Thorne, who had been detained. This was during the period of the so-called coloured student boycott of 1980.

He had been detained without charges because he had spoken out at a public meeting of students and teachers and parent associations in support of the continuation of that school boycott, which was a most significant event within that country. The coloured people are supposed to be viewed as those who are treated a little more gently than others who have, from the racist South African point of view, a taint of colour in their skin. That boycott lasted many weeks and many people were arrested.

At any rate, those 53 of us who represented major leadership from every denomination within South Africa who joined in the service of witness and then a silent walk to the Johannesburg district jail to deliver a letter to the Minister of Justice demanding the release of Reverend Thorne, were all arrested by guerrilla-camouflaged combat troupes at machine gun point, jailed and held for 24 hours and released without bond for appearance six weeks later. That evening, 5,000 people, mostly whites, gathered outside the jail to protest our arrest and Thorne's arrest, and the next morning some 7,000 people gathered outside demanding the release of all of us, which is very significant within the country's life.

I was really quite an innocent participant in this. I had no idea at the time what would happen as a result of this very simple witness.

I was allowed to stay in the country to terminate the consultation. I left the country without any further contacts with the government. I applied for a visa to return and stand trial in a country that prides itself on law and order. Three times I intervened directly with the embassy in Ottawa and finally was denied a visa to return and stand trial and to participate in a co-defence with my other 52 co-defendants. I was the only one against whom charges were dropped.

I happen to know that a number of leading Canadian people who have had concerns and interests in South Africa, including academics and journalists, such as Tom Harpur, a reporter for the Toronto Star, have been denied visas because the government chose to view their activities as being other than sympathetic without them ever having been there. So I think it is hard to predict.

The government is obviously prepared to go to great lengths,



as is the pro-government private lobby, which is known as the South African Foundation, to take people in, all expenses paid, and to paint the picture as brightly as it possibly can; and Mr. McKenzie of Winnipeg has recently been hoodwinked by that process. But certainly the government has its own interests when they allow people in and when they do not allow people in.

Mr. Boudria: Mr. Chairman, I wonder if we could know, the statistics that were used of 80 per cent of the black population in South Africa, does that include the so-called coloureds? Is it part of that 80 per cent?

Reverend Anthony: Yes.

Mr. Boudria: Or is there 80 per cent black? It is a three-class society, not a two-class society.

Reverend Anthony: We do not have a breakdown, but the 80 per cent in general terms would include blacks, Indians and coloureds. Anybody who is "coloured" or has colour in his skin would be in that percentage.

Mr. Boudria: Of course, we all know that some of those "coloured" people are not even coloured.

Reverend Anthony: When some of us have good tans we look like what they call coloured or Indian. The basic question is why go by colour.

Mr. Boudria: Of course. I was just trying to interpret the statistic you have in there, because I have been in discussion with somebody in the last two days who is a coloured person, as they usually call themselves or had been so called when she was a resident of South Africa, and I wanted to know about those statistics.

Reverend Anthony: We could give you a much deeper analysis of those figures if you wanted it, but that is in general terms, I think.

Ms. Pratt: That would include everybody who cannot vote for the national institutions and would include the three groups, the blacks, the Asians and the coloured who consider themselves as black today, because the white regime has provoked a kind of solidarity between all of those who cannot participate in the national and political life.

Ms. Greene: We are tabling, for your follow-up information, a study that the churches did of that particular kind of question which summarizes in detail all of that material as well as a study commission on US policy towards southern Africa, which was done under the auspices of the Rockefeller Foundation, which I think will answer some of those detailed questions for you.

The Vice-Chairman: I think Mr. Philip has a question he would like to put too.

Mr. Philip: I only had one question first--

Mr. Bell: I want to make sure that we do focus in on the thrust of your brief, and it is very succinct and to the point. The point is that the Legislative Assembly and/or vehicle of the assembly does whatever is within its authority to try to convince the government of Ontario to terminate any continuing association. If I can echo one of the themes that the committee has discussed this week and other weeks, which is why, and what good would it do. I throw that open to any or all of the four of you.

2:40 p.m.

Reverend Anthony: Let me speak from the United Church of Canada's policy base. Our church, internationally, has been concerned with the racial situation since it was imposed in 1948 by the white minority. A number of our bishops and priests have been exiled, jailed or have died in custody as a result of our church's stand, and a number of our lay people, including some of the most significant leadership within the liberation movements of South Africa, have been Christian people of our denomination: Steve Biko, Robert Sobukwe, Nelson Mandela, Sally Motlana and so on.

It has not been a recent, knee-jerk kind of response to the situation that has led my denominational community internationally, nor my church in Canada, to arrive at the very strong stand we have taken with reference to further Canadian political and economic involvement with that country.

We have had, through our Primate and other representatives, direct representations made to the government of South Africa and its representatives both in Canada and in South Africa. We have had invited to Canada major representation from the black community there. In 1974, we invited Chief Buthelezi, Gatsha Buthelezi, who was a very significant political leader of the Zulus, the largest ethnic group within the black community. As I mentioned earlier, we had a major fact-finding group that went in 1975 to try to listen to the Christian community and the black community there, particularly about what they felt was needed.

It is our considered conclusion that the only way in which significant change can occur in that situation is by isolating and removing the political, economic and moral supports which the government of South Africa currently enjoys from the west, so that any significant social change can take place. Indeed, it is the obverse of the argument being used with such a massive propaganda campaign and such massive manipulation of the media. We have heard about the (inaudible) scandal, and the abuse by the South African government of fronting a number of organizations to buy newspapers to distort news, et cetera.

Their claims about a Communist threat are really the underside of what they are provoking themselves. It is only through the west's continued support of the white racist regime that they are enabled to remain in power. The sooner that western interests--political, economic and others--join forces with the struggle of the majority of the people of that country to free themselves and to have a just society, the sooner we will avoid the risk of a Marxist, eastern dominated and controlled, armed



struggle for the liberation of South Africa.

Ms. Pratt: I would just like to add to this point, if I might. I think Mr. Bell's question goes right to the heart of the brief. We tried in this brief, as far as is possible for this forum, to explain why we feel that the matters which come under the Ontario Legislature and its jurisdiction could have some influence to bear on it. Obviously what we can do from outside of South Africa is very little.

We are concerned that the changes which are inevitable in South Africa occur in a peaceful way. We would not want to advertise armed intervention, but we would like to draw your attention to the fact that any signal which we can send to the South African government that business is not normal with a regime such as that, would be helpful to the people within the country.

We have met with numerous black leaders from South Africa, and it is underestimated here how very welcome support activities are for the people in South Africa so that they do not feel isolated. They cannot speak out there, but we can.

The main questions in the brief address the question of corporate links, and it is that question which has occupied the task force in its conversations with Canadian banks and with Canadian companies which are active there. The central question is: Does foreign investment help or hinder the amelioration of the repression there?

It is our considered opinion that at this stage in South Africa they strengthen the South African white regime's self-confidence in carrying on and that convenient loans to South Africa, unquestioned continued investment and commercial links with no conditions attached to them have the effect that the South African government can ignore global condemnation in the United Nations or even from the External Affairs department here.

It is when economic pressure is exerted by placing conditions on further investment, placing conditions on continued commercial links, that we can hope--and it is our only leverage--that white South Africa will understand that there are some regimes which are just unacceptable for normal business relationships. The New York Times in 1979 even spoke of South Africa as being worthy of what it called the Hitler exemption, that very few countries like to withhold commercial relationships but that with regard to South Africa the Hitler exception should be applicable.

The Vice-Chairman: I think we do have a couple of questions here, but we would like to give you time to make both brief presentations and maybe be completed by four o'clock. We do not want to get bogged down with too many questions, but we do want to get to the heart of the presentation.

Ms. Greene: I want to make one point that follows on this precise question. Our experience in the United Church is quite different from that of the Anglican Church, and I think it indicates from our point of view as an institution why it is not

just having a good thought about South Africa that is the point but actually making sure that one is not contributing to a process that is creating underdevelopment.

We are not a church that has international ties; we are there in the capacity of an aid agency. We have been there in self-help development projects, we have been there in refugee work, we have been there in funding for the wives of people who have been detained and supporting their children. They do not have social security rights and that sort of thing, and they have to have money from somewhere. A lot of funding has gone into that.

The problem is that when the people with whom we are participating in these funding projects--they are essentially development projects or support people in a very underdeveloped situation--talk to us what they are concerned about is that we would not only support them in their quest for a development that would bring them to what we would consider a normal standard of living but that we would also help to break down those kinds of forces that support the process of underdevelopment.

That is why they call on us regularly to draw to the attention of other Canadian actors who are there undoing what little good gets done in self-help development among the black population where there are other forces that support those elements within white South African society that determine that blacks among the South African population shall not benefit from the development process there.

Do you want to take other questions or do you want to conclude?

The Vice-Chairman: We had two questions. Do you want to place your question now, Mr. Philip?

Mr. Philip: You talked about the support of the churches in South Africa at the time in which you were imprisoned. Does that include the Dutch Reformed Church? What are the links of your organization to the Christian Reformed Church here in Canada, which, I gather, is the sister body of that church?

Reverend Anthony: I will answer the second part of the question first. The Christian Reformed Church has just in the last year joined our task force in an observer status and has expressed considerable interest in the work we have been undertaking for some years. As you may know, they are a small denomination in our country. They are members of the Canadian Council of Churches but they have manpower problems in that active participation and funding are relatively limited.

However, both that organization and a more independent organization known as the Committee for Justice and Liberty, who have also been deeply concerned with these questions, have been in close consultation with us over the years about the situation there. They have published a number of documents relating to the situation--books and so on.

2:50 p.m.



With reference to the Dutch Reformed Church in South Africa, you may know that they have been--and it's significant--isolated by the world church community for at least two decades. At the world level they have not been members of the World Council of Churches. Within the reformed church alliance of the world they have had major consultations occasionally but are essentially isolated with the Dutch church itself from Holland. They have been totally isolated in terms of direct and continuing consultation. Most recently within the country more significantly the black and coloured majority membership of that tradition has signalled strong potential for breaking with the white dominant church.

It is true that the history and the cultural, ethnic and theological understanding related to that tradition have been a strong bulwark for the ideological stance of the Nationalist Party, but in my view--and it would not be mine alone by a long shot--that ideological or theological support has long since gone. It is not just a conservative but a reactionary view to assume today that there is any Christian basis for the Afrikaner ideology and policy.

Of significance with regard to the events I referred to last year is the fact that immediately following the arrest of this national church leadership there was a cabinet level consultation with the major leadership of all but the Dutch Reformed Church, which is the first time in my recollection in the last 25 years that such a meeting has occurred. It was an extremely risky meeting for the leadership of those churches because the black community were extremely suspicious of any kind of interaction.

It was not a very fruitful meeting in terms of any kind of conciliation or change in policy, but I think those who were there on behalf of the Roman Catholic and other Protestant churches, except the Dutch Reformed Church, felt that at least they had given the government one last chance to hear the concerns of the churches and of the people and that it was important to take that opportunity.

Mr. Philip: I have one last question. Your brief tends to focus on what one can call atrocities outside Canada. Do you feel that this committee should be dealing with human rights issues within the province, such as some of the matters that have come before the human rights commission or, indeed, such as the more recent atrocious remarks, if they can be verified, of the pastor at Faith Cathedral in Rexdale?

Reverend Anthony: We are not here to speak specifically to those things, and I meant to make some reference in my initial remarks. Certainly I think it would be our view, because many of us directly and others certainly more directly than ourselves have participated in such concerns within the domestic area of Canada and within this province, relating particularly to native peoples, to women and to all the functions that would fall under the human rights code of this province. I might say that the current commissioner of human rights has been a member of a national task force on human rights of my own denomination and has helped to frame some of the policy framework within which we have tried to

identify more explicitly appropriate domestic priorities for our concern.

Certainly I would say that both within the Canadian council purview, where we have a standing committee on human rights, and within the various denominations those kinds of concerns that you refer to are very relevant.

Mr. Philip: I think you may have misunderstood my question. My question was not what was the purview of your interests as a body, but how wide a scope you feel that a committee--

Reverend Anthony: I was trying to be affirmative and say that yes, I think it would be appropriate and it would be supportive of the concerns of the churches in such wide ranging areas of concern as police brutality, where one of our own local bishops has become involved very directly in that matter of racism and so on.

The Vice-Chairman: Mr. MacQuarrie, did you have a question?

Mr. MacQuarrie: Yes. I have two questions, really. The first one deals with the churches in South Africa. What sort of restrictions are applied to various denominations? Are blacks prohibited from being ordained clergymen? Are they permitted to associate with whites in ordinary congregational work, or are they separate congregations? Do you have at the level of the individual congregation any sort of black-white interchange, if you will?

Reverend Anthony: Basically it is a function of the laws of the society. The apartheid regime now has been almost completely imposed--that is, absolute residential segregation, which has very major impacts. For example, in Johannesburg, Soweto is at a significant distance--it is the largest black urban aggregate--from the centre of the core of the city, where most whites live, or in the white suburban areas, and the same could be said of the other outlying black areas. That de facto, merely physically, restricts the possibilities of movement.

Furthermore, by law blacks are not allowed to be in white areas after certain hours without explicit written permission to perform certain functions; and vice versa, whites are not permitted to be in black areas after certain hours without explicit permission, et cetera.

That is the basic fabric of the society. For example, when I was there during the school boycott a year ago a meeting had been set up for this international delegation, including whites and blacks from Africa, to meet with the black and coloured clergy in Port Elizabeth. The local superintendent of police refused to allow us to enter the black communities to meet those people. They then tried to come out--this was a meeting chaired by our own bishop in that area, an ecumenical meeting--they tried to get out of their communities to come and meet us, and many of them were denied permission to move out of their area to meet with us.



With regard to worship, by law integrated congregations are not permitted--a number of congregations have defied that law--again because of the mobility question. A number of denominations have attempted to provide deliberate linkages between white and black congregations, but that is extremely difficult in terms of time, energy and so on and so forth.

Mr. MacQuarrie: With regard to the education of the church workers, be they ordained clergy or other workers, are there any institutions that provide training to both whites and blacks in the same classroom?

Reverend Anthony: Not now. Again, the churches have tried to integrate some of those, and wherever they have persisted they have been destroyed. The major federal seminary, which is ecumenically broad, was forced off the lands it had and forced to relocate at massive capital expenditure because it was attempting to provide integrated racial education just in the last three years.

With regard to education generally, of course, blacks are denied anything like the opportunity in any field, whether it be teaching, nursing, agricultural development, medicine, law, any kind of enterprise, administration for the church, accountancy, you name it. They start from about a 10-to-one ratio against them in terms of expenditure per capita or opportunity to advance. That has massive implications for the church as well as every other sector of society.

Mr. MacQuarrie: Concerning the main thrust of your brief, the commercial and corporate relations with South Africa, this has always rather troubled me in terms of terminating relations in that I feel the rain falls on the just and on the unjust and by terminating quite legitimate and proper commercial relations in terms of goods, services and buying goods and services you are hurting the whole economy, on which the blacks depend as much as the whites--but maybe not to the same extent in terms of who derives the larger per capita income and that sort of thing. None the less, families can be hurt, individuals can be hurt, by this sort of action.

3 p.m.

I can see the sale of certain merchandise being prohibited, mainly arms and the like. But I think it is wrong to say no more South African wines. Maybe the Women's Christian Temperance Union would say that is a good idea, and a lot of people would, but those wines certainly are produced from vineyards in which substantial black labour is involved.

Then we turn to what the United Church has been doing in terms of redevelopment and development. Surely its funds ultimately filter out, even though they are directed to improving the lot of the black citizens of South Africa, or supporting the wives and families of those who have been arbitrarily detained by an oppressive regime. If they are to buy goods and services, surely they are not always buying them from black communities or black enterprises. Indirectly those funds filter back into the

economy as a whole.

I am not trying to draw a definite parallel and I am not in any way being critical of what the United Church has been doing because it has certainly been of benefit to those most directly involved. But the whole question of arbitrarily saying no trade, no commerce, no this, no that, with South Africa--you wonder whether you are doing more harm than good. This might be the party line, I don't know.

The Vice-Chairman: Mr. MacQuarrie, I wonder if we could let them complete the brief and then we could come back and finish.

Mr. MacQuarrie: I am sorry, Mr. Chairman, I was under the impression--

The Vice-Chairman: That is fine. I am keeping one eye on the clock and we would like to be fair to the people making the presentation. Mr. Shymko, would you permit us to complete and then ask your question?

Mr. Shymko: Certainly.

Ms. Greene: I think the thing you need to understand, as we said a little earlier, is that it is blacks themselves who have said they have already paid an enormous price. They are the ones who ask for your support in breaking down those forces that keep them repressed. They ask you to ask those Canadian institutions that are present in South Africa whether their thesis can really be borne out by the social and economic indicators, the evidence of our lives under an apartheid system. They say they will indeed be the beneficiaries of development that takes place because they are present.

They are the ones who have taken that decision and that is their request to us. I think that is a really important point to remember; they are the ones who say they want to pay the price.

We need to draw your attention just briefly to the recommendations we have made. On page six, item 20, we are recommending that the select committee propose to the Ontario Legislature that Ontario incorporated companies operating in South Africa be requested not to expand their present investment and to call upon all other Ontario companies to refrain from investment in South Africa. Our experience is that many of the companies with which we have been in dialogue, many of those companies that have found themselves virtually hostage to the military preparedness of the South African government, are Ontario incorporated companies.

We would also recommend that Ontario companies with subsidiaries or affiliates in South Africa make full disclosure of the nature of their operations there, including contracts with the South African military, and that they file a progress report on an annual basis.

Point number 23: In order that Ontario government support for any increase in commercial relations with South Africa cease, we recommend as well that it be proposed that no Ontario



government funds be expended for provincial trade missions to South Africa.

At the bottom of that page, item 25, we recommend to the select committee that it propose to the Ontario Legislature that it instruct the Ontario Liquor Control Board to cease importing all alcoholic beverages from South Africa. You have that argument on pages eight and nine.

If you turn over to page 10, the essential recommendations on that page are item 33--that the select committee make the following proposals to the Ontario Legislature: that it initiate contact with Canadian financial institutions to elicit a public policy commitment of no further loans to the government of South Africa or its agencies; that following a specified period of time the Ontario Legislature begin a phased removal from its approved list for investments of financial institutions that have not enunciated a public policy of no further loans to the government of South Africa or its state agencies.

Item 34 asks that the Ontario Legislature, together with a committee representing pension beneficiaries and other interested parties, examine the pension assets managed by the province and explore the possibility of channeling them to financial institutions with no financial links to South Africa.

On the next page there are two I want to draw to your attention. Item 37 asks that the committee propose to the Legislature that provincial funding should no longer be made available for cultural or educational exchanges with South Africa. We also would point out that we would view it as improper for members of the Ontario Legislature to take the trips offered by the South African government or promotion agencies such as the South Africa Foundation.

Finally, on the last page--

Mr. Philip: They never offered me one.

Ms. Greene: Pardon me? You weren't offered one?

Mr. Philip: They never offered me one and I never had the pleasure of refusing.

Reverend Anthony: After today it will probably be coming.

Ms. Greene: We have been offered them.

We are recommending as a matter of urgency that the select committee propose to the Ontario Legislature that the Ombudsman's participation in the South African conference is inappropriate and that he be urged not to attend.

Mr. Bell: Can I go back to page eight for a moment? Again, why not? What is wrong with a member of this assembly accepting a trip to South Africa, I presume at the expense of the South African government, and then once he or she gets there find a forum and then let them have it?

Ms. Greene: It has not been the case that people who have been there have been able to see what the conditions of life are for the bulk of the people.

Mr. Bell: Aside from that. They can take you to the nicest factories, the nicest black communities, I don't care; somebody who already has his or her mind made up or already knows. What is wrong with that?

Ms. Greene: You might get away with it, but you saw what happened when Jesse Jackson tried to do that and I think it was Andrew Young--

Mr. Bell: Neither of whom represented a government or a legislative assembly when they did it--or tried. They were private citizens when they went.

Ms. Greene: But I would argue that I think that is a waste of the kinds of instruments that governments have internationally and that you are not going to get a great deal of coverage of that kind of thing. It is not going to be an effective means of resisting the kind of efforts the South African government has undertaken to reinforce its separation of the races in South Africa.

Reverend Anthony: Furthermore, I think they have always used such occasions as a means for making propaganda. They would use the visit of an official or elected representative of any Legislature in Canada, whether federal, provincial or even a member of city council from a major city, as a significant occasion to give the appearance that all is well in that country.

That, I am afraid to say, runs not only through official government circles. I could give you in detail the deception of the Ford Motor Company who, by the way, are directly a subsidiary in South Africa of Ford at Oakville, Ford Canada. When I was given an undertaking by them that they would introduce me to their labour union representatives, of which they highly touted their relationships, at 10 o'clock in the morning they promised to set up the appointment for me before 4 p.m. At 3:30 their director of labour relations turned to me and said, "Father Anthony, we would really prefer that you make your own appointment." This came after there were three undertakings in the office of the managing director that they would ensure such a meeting was set up.

It is that kind of manipulation which occurs and has occurred on so many occasions. It literally prevents one who delivers oneself into the hands of those people from getting an adequate view, voice or even an entrée to legitimate voices of the black community if you go under those auspices. They simply will not trust you. They will not expose themselves to that kind of risk. You therefore come away with a very biased and twisted view of South Africa, such as the one that Mr. McKenzie represents in his inane comments, if I may say so, on returning from his trip.

3:10 p.m.



Mr. Shymko: I wanted to ask a few questions and perhaps comment. Reverend Anthony, I believe you stated something that is crucial to the deliberations of this committee and the work of this committee when you said there are unfortunately double standards of governments in terms of human rights, the definition of human rights, the violation of human rights, as they apply to some parts of the world and continents and not specifically to others.

There is no doubt in my mind that this committee and all its members certainly not only object to the apartheid policy of South Africa but also would be supportive of any means available to change that policy and to work towards the progressive changes in that country to make that society as close to ours as possible.

There is no doubt that freedom, human rights, basic political and civil liberties are indivisible, no matter where they are violated, and it is on the basis of this premise that this committee would not want to see double standards in government and would hope that international organizations, and certainly effective organizations such as yours, would never apply double standards in your research, in the educative work you do and in the public pressure you exert on bodies such as ours to work progressively towards these changes.

I compliment you on the effectiveness of your work and the calibre of your research, in the documentation you have presented to this committee on violations in South Africa. I believe that the reason your brief centres on South Africa is probably related to the decision of the Ombudsman to visit that country and you wanted to raise this, in addition to your concerns about violations. You also work and concentrate on the violations of human rights in Latin America and the briefs are excellent. I certainly will have read a lot of material and will continue to read this.

I would like to ask you: Has your interchurch organization, in the light of the indivisibility of human rights freedoms, ever submitted or worked on briefs on violations of human rights in eastern Europe, for example? I would love to see something here and, if you do have documents, I would appreciate if you would perhaps provide them for this committee, because of the calibre of your research.

Reverend Anthony: I am sorry. Unfortunately, you missed my opening remarks in which I made some references to Poland. We have made such submissions, and that is the reason why we are focusing on these particular concerns today. I suppose they will be on the transfer.

I might say that the three of us were at a major interchurch consultation with US church representatives, 50 per cent from Canada, 50 per cent from the US, just a week ago in New York City for three days, monitoring the Helsinki accords and trying to discover ways in which the Canadian and US churches could deepen our collaboration around the kinds of concerns represented there, both in terms of monitoring government actions within our own countries and internationally with reference to eastern Europe and

with reference to our collaboration internationally with other Christian bodies around eastern European concerns.

Just this week the chairperson of that World Council of Churches committee and a staffperson were here in Toronto consulting with a number of our church bodies about further work in that field. My own denomination has funded that activity at the world level, as has the United Church and others. Certainly the Roman Catholic Church and the Lutheran Church in this country, both of whom are participants in these organizations before you today, have played major roles with reference to advocacy around human rights concerns in eastern Europe over the years.

Mr. Shymko: I am sure there will be working relations with your organization and this committee, and I think we would appreciate having some of this documentation. I may be a little prejudiced from the point of view that there is vast violation of even religious freedoms. There is the four-million membership of the so-called Uniate Church which to this day is fighting for a legalization of its existence, and something like 12 of its hierarchy have been liquidated.

Reverend Anthony: Again, if I may be permitted just one final observation in response to that: My own denominational leader is also the moderator of the World Council of Churches, Archbishop Scott, and he has been directly involved in international consultations, together with Roman Catholic and other representatives of the Orthodox and other traditions, in addressing religious liberties and other concerns around human rights in the eastern bloc.

The Vice-Chairman: We would like to have Dr. Foster make a presentation on Latin America--he hasn't had that opportunity yet--and then maybe we could follow up with some questions. I think Mr. Boudria has some questions. Could you hold off for now? I am sorry to confine this, but I could see us opening a wide variety of questions which we may not have time to deal with.

Reverend Anthony: Dr. Foster is going to speak in a brief period of time to some 300 pages of documentation that I think you have before you.

Mr. Bell: Hurry up then.

Dr. Foster: I want to say a couple of introductory words about the sources and the nature of the documentation which is before you and to another batch of documentation that I want to leave with you.

The Inter-Church Committee on Human Rights in Latin America has been in existence in one form or another for almost the last nine years and originally began as an emergency response by Canadian churches to the military coup in the Republic of Chile in 1973. Through the relationship with Chilean churches, with refugees and others, we gradually became aware that situations of human rights which exercised us in that country were not restricted to that country and in fact affected many of the neighbouring countries in Latin America. A key moment in that was



the tour to the southern cone of Latin America, which we sponsored ourselves, of three Canadian parliamentarians in 1976. They went to Uruguay and Argentina. They were refused entrance to Chile at that time. They were David MacDonald, Andrew Brewin and Louis Duclos, from the three parties.

Our organization is primarily a human rights defence and documentation organization for the Canadian churches. Much of what we do relates to the Catholic church because of the nature of the population in the hemisphere, but we also relate to Protestant bodies throughout the hemisphere.

We are engaged as part of a network of documentation and defence through the hemisphere, such bodies as the Vicariate of Solidarity, which is essentially equivalent to a legal aid agency, only run by the church in the Republic of Chile; the legal aid office of the Archdiocese of San Salvador, in Salvador; justice and peace commissions in various countries; and independent organizations like that of Dr. Perez Esquivel, the Nobel prize winner from Argentina.

We receive their documentation. We frequently receive urgent action cables or telephone calls regarding the disappearance of church people or union leaders or the killing of priests or whatever, and we attempt to respond both by alerting a network of people in congregations and women's groups in Canada and by pressure on the Canadian government.

Each year, in recent years, we have prepared a major brief to the Canadian ambassador to the United Nations Commission on Human Rights. So behind the brief covering item in your file, you will find something that looks like this. This is our major brief for this year which was presented on January 21 and which has also been sent to the commission itself. It includes seven countries' specific reports, consideration of general problems of human rights and the problem of the disappeared. There is quite an extensive section under page 90, general concerns, related to Canadian policy and to the relationship between human rights and economic policy which we have already opened up in discussion here this afternoon.

I would also mention just as a sort of footnote that I note that in your resolution you were concerned with consulting with the UN Commission on Human Rights. It was my privilege to represent Canadian churches as part of the World Council of Churches delegation at the UN commission last year, and I will be leaving shortly for a short return engagement in that regard, into what are very animated discussions this year. As you may know, the director announced his resignation yesterday which is a major loss to the cause of human rights on the international level.

3:20 p.m.

In terms of the materials before you, you have this short covering document, the major brief, a press release based on the major brief and one example of congregational educational materials done by the United Church, in this case on a particular situation of concern.

To go very rapidly through the introductory document, I want to establish our cause for concern, supplementary to what Tom Anthony said earlier.

We do have relationships with the Christians of Latin America, which are quite intense and getting more so, I would say. Canadian missionary orders have gone back and forth, Latin American visitors have come back and forth here, and there have been refugee movements as well.

In that context, not only the specific concerns of specific human rights violations, whether it is a firing, a disappearance, examples of torture or murder relating to anyone or specifically to people in the Christian community, exercise us and call for our response, but we also have a general concern with the evolution of the neighbouring societies. That is mentioned here on page two.

The growth of military states, under the ideology which has been termed in theological studies a national security state mentality, in the southern cone and elsewhere in Latin America is a matter of concern to all of us and to anyone concerned with the principles expressed in the Universal Declaration of Human Rights, the Canadian constitution or the practice of organizations like the Legislature of Ontario.

In that general context, more specifically we are very concerned as a committee and as churches in the relationship of human rights as a factor in the policy of Canadian governments and Canadian private institutions.

We were very much encouraged by the serious attention given to this, and which is still being given to this, by a subcommittee of the Canadian Parliament set up last May, I think largely because of public concern in this area. This subcommittee is addressing the question of Canada's relations with Latin America and the Caribbean.

One of the first things I would want to do today--and it is our first final recommendation--is to commend that report to you and suggest that you study it and that you commend it to your colleagues in the Legislature. It is the interim report, tabled in December, of the parliamentary subcommittee on Canada's relations with Latin America and the Caribbean.

One of the reasons we are happy with that report, as far as it goes, is that for the first time in my knowledge it clearly establishes human rights as one of the four or five main factors in the making of Canadian foreign policy and also makes it factor number one. The minister concerned has termed that idealistic, and there has been an exchange about who is idealistic and who lives in the real world. In any case, I think it is worthy of serious study.

The treatment of policy by that subcommittee is worthy of study. We would like to see them go forward in looking at the growth of militarism and an examination of the power and policy of the United States in the hemisphere.



We are particularly interested, and I think this committee should be interested, in the next stage of the deliberations of that federal body, which is to examine the relationship between human rights and Canadian trade and development assistance policies. It is my understanding that they will be hearing briefs on that matter between now and the end of April. I commend that to you in your studies.

We have already established many of the connections of Ontario with the issues under consideration. I have highlighted two or three. For example, the Sisters of St. Josephs, Toronto, a missionary body in Guatemala, had to withdraw its personnel--many of whom are personal friends of us here--in December under threat of death from death squads in the republic of Guatemala. That is example enough. Relate to that the question of Canadian trade and development. Should the federal government be subsidizing Bombardier sales to Guatemala in a circumstance like that?

Under item six, page four, we have listed a number of the initiatives because, I must confess, we were not aware of the precise stage at which your committee is at in its deliberations, and we recognize that we are relatively late in your process. On the other hand, we would like to begin a process of discussion and clarification and development of ideas; so these are fairly general.

The first has to do with the question of education. Here we are reflecting discussions in the Toronto Board of Education, among others, regarding the circulation of information on human rights in our schools and among our population. We are naturally very interested in forwarding human rights education and particularly in making that as current in developing fundamental understandings of what lies behind the repression of human rights in the schools; so we refer to that.

Second, with regard to federal-provincial consultation, through our work on the of the United Nations Commission on Human Rights, we are aware that the Canadian government from time to time calls provincial human rights commissions into dialogue and even into participation as observers for orientation in international discussions, whether that is in the United Nations Commission on Human Rights or as observers to the human rights committee. I believe you have had Professor Tarnopolsky here, a Canadian expert who sits on that committee.

We are certainly very interested in seeing those processes developed, not only that Ontario law and practice should be brought into line with Canada's international commitments but also that Ontario practice and the people who administer human rights and review human rights concerns here be oriented to global concerns. We would certainly be willing to assist in informing provincial agencies and supporting any initiatives they may wish to take in terms of situations of mutual concern.

The issue of trade has already been raised here, and in this brief we are not calling for particular boycotts or removal of trade. We are concerned, however, with the orientation of people who engage in trade missions and the context in which our

initiatives are taken; the extent to which we become, if you like, compromised in situations overseas by loans, by long-term trade deals and so on.

The moderator of the United Church, speaking recently to the federal government, remarked on her experience in visiting Korean church leaders who had been imprisoned and who had seen many students, workers and others imprisoned, and hearing their appeals which were very similar to the appeals of South African black colleagues, and waking up on the morning that the Prime Minister of Canada arrived--it was the morning she was leaving and the morning he arrived--to attempt to sell Candu reactors to Korea, apparently with the acknowledgement that human rights would not be on his agenda in that context.

We see these things as intimately related, and we think that if the Ontario government and the Ontario taxpayers are spending money on the encouragement of trade, we would at least like to see participants and organizers in trade support activities be aware of some of this context for starters.

In that context, we have a specific concern with defence products. The churches, through the task force, have very specific concerns about the sale by a crown-owned corporation based in Ontario, de Havilland, of an aircraft to the Chilean armed forces at the time when the human rights situation in Chile is, again, deteriorating. We wonder if perhaps there are areas of the world, which were raised here earlier with regard to South Africa, where Ontario would take the position that materials produced within its jurisdiction should not be sold to a given regime.

Mr. Philip: Are you talking about the Otter?

Dr. Foster: Pardon?

Mr. Philip: Is it the Otter they have been selling?

Reverend Anthony: It is actually the Buffalo.

Mr. Philip: The Buffalo. Yes.

Dr. Foster: Yes. We had quite an exchange of correspondence to see if we were talking about the same aeroplane, but finally it was agreed by the federal government and the churches that there was some confusion.

Mr. Philip: The employees tell me that sometimes they come back for servicing spattered with blood.

Dr. Foster: It is news to me. But that is very interesting.

Mr. Philip: They actually found them in that condition.

3:30 p.m.

Dr. Foster: On the question of refugees, we have simply remarked on the situation here that Ontario was certainly



intimately involved in the resettlement of several thousand Latin American refugees over the past decade and that at this point we are extremely aware of a growing number of refugees, largely those resident in Mexico or on the borderlines of the United States, from Guatemala and El Salvador. We are very curious about whether this province sees itself as able to undertake special measures to assist in the resettlement of these refugees. We have a sister agency, which is not present at the table here, the Inter-Church Committee on Refugees, which is engaged in these efforts and which would be glad to assist.

We thought it might be useful to suggest some first steps, and so we have suggested, on page six, item seven, the review of the parliamentary subcommittee report. Unfortunately, we did not have enough copies to bring to you, but I am sure they would be readily available from the clerk of that committee in Ottawa.

Second is the question of the integration of human rights educational materials--and I know that Amnesty International has done some pioneering work in this--and the Ontario education system is a matter that should occupy you and push forward.

Third is the question of human rights briefings and briefing materials for the organizers and participants in trade missions. These are just some initial steps.

In conversations here in the foyer, before the actual session, the question was raised of what people could do as individual legislators or collectively as legislators. We did not address that in our briefs, in a personal or individual way, in a way that we might have, but probably many of you are already members of organizations which undertake activities in human rights affairs, whether it is Amnesty International, or whatever. I am unaware as to whether you have a collective formation, within the parliament of Ontario, on that basis. That is something that has been done by Amnesty International at the federal level, in terms of bringing legislators together, perhaps even to write letters on behalf of imprisoned legislators elsewhere.

In terms of fact-finding missions and orientation overseas, our organization from time to time has sponsored fact-finding missions and engaged federal legislators in such. There is nothing particularly saying that we would not be interested in provincial legislators, and I have been interested by the development in some provincial areas of the interest on the part of members of the Legislature in participating in human rights meetings, or in political meetings, of Latin American counterpart organizations.

For example, there is an organization of the political parties of Latin America. It might be possible to arrange observer status for people, just in terms of orientation. There is a body termed the Latin American Human Rights Association, based in Quito, Ecuador. Several people representing a political party in a neighbouring province attended their recent meeting in Lima, Peru, in the middle of January, again for orientation.

The democratic forces in a number of these countries, particularly in Uruguay, have often sought the support of people

in democratic political parties outside their country. These are often people in exile. In Uruguay, for example, there is an organization which brings together, under the son of one of the former presidents, virtually every political tendency from what we would have in the spectrum represented in this room, to the left, if not to the right, called the Convegencia de Democracia de Uruguay. These people look for people who will undertake to support their activities and the return of democracy in Uruguay; possible participation in visits to prison; possible participation in conferences and in public declarations the support of democracy in their country.

There are a number of roles which could be explored as individuals, as members of particular parties or whatever, and we would certainly be interested in continuing that conversation.

That is all I want to say at this point, although if you are planning some sort of reference system of documentation for yourselves, in addition to the brief, we have a series of dossiers on the seven countries specified in the brief and on the question of the disappeared. I will leave these with your clerk for your own reference in future. Similar copies have gone to the federal government and the human rights commission as well as to delegations of a number of the other member states of the human rights commission.

The Vice-Chairman: Thank you, Dr. Foster. Mr. Shymko, would you like to--

Mr. Shymko: I just want to complete some of the questions that I had about something else that Reverend Anthony mentioned with regard to the visit of our Ombudsman--not so much his visit but the fact that the International Bar Association had accepted South Africa as the place to hold its meeting.

It is your opinion. I do not want to get into a discussion of the Ombudsman's visit. I believe we have scheduled another day for this, but it is apparent that the discussions today are related. I am not going to quote from the Ombudsman as to the role he feels he can play in working towards some changes within that particular state.

I tend to agree with you that very often regimes that violate human rights, that certainly have an international label, will tend to use international conferences and respected bodies not so much to change--and I think the changes there are debatable--but definitely, if I may quote you, to use this propaganda that says all is well in the country.

If the World Council of Churches, for example, had decided to hold a conference in South Africa, I am sure you would violently object to such a decision, and I am sure you would violently object to a decision by any international religious organization of prominence to use any regime.

Correct me if I am wrong, but there have been a number of such prominent and impressive church organizations and interfaith organizations that have held conferences in Moscow and in certain



countries under Soviet regimes, and I have always stressed that this is not going to change it. It had been used as a propaganda gimmick. In the years following that, we have not seen any substantial changes, certainly as witness what is happening in Poland today.

You said you had visited South Africa officially from the Anglican church.

Reverend Anthony: Yes.

Mr. Shymko: If there had been public objections to your visit, would you have retracted your decision to go?

Reverend Anthony: Well, I visited on two occasions, and the purposes of my visitations were quite deliberately related to our own mission involvements with the church there. There were questions about the initial visit, which was approved by a deliberative process through a number of committees and structures in our church, concerning why we needed to go and ask questions about the larger scene. That was highly debated, and there were some within our constituency who both before and certainly after they heard our findings felt that it had been inappropriate for us to go because we came up with the wrong conclusions, on the one hand, in their view.

But certainly the decisions that have been taken by our own churches to send people to places like South Africa, Chile et cetera have been decisions taken to express solidarity and to have intimate consultations with other church leaders in the countries affected.

I think it should be a matter of record here that the World Council of Churches is forbidden to have any representation enter the country. Obviously, when my own primate, Archbishop Scott, accompanied our delegation in 1980, the government of South Africa chose to wink at his official role and function in permitting him to enter the country. If they had been thoroughgoing and had not wished to give the impression that they were open, they could have denied him entry; but to have done so would have been a major international offence, given his roles and responsibilities, and certainly would not have been a good image to have created back in Canada.

I think it should also be on record, and it is a matter of public record both in my own constituency and in other forums, that it is not without significance that the other Ombudsman planning to go on this trip is a fellow priest of my denomination, the Reverend Randall Ivany, the Ombudsman of the government of Alberta. He has publicly and on record criticized my own church's policies and my own remarks, positions and activities with reference to Canadian involvements in South Africa.

Not only personally but also in terms of my own church's policy, I think I must state that his participation in this event is also contrary to our stated position. Ontario's Ombudsman, in joining with him if he does so choose, will, in image if not de facto, give the appearance of having already prior to his visit

associated himself with the persons whose views are very supportive of the status quo of the situation in South Africa today; which I think is most unfortunate.

3:40 p.m.

Mr. Shymko: Nevertheless there has been some controversy and debate as to whether your decision to go was wise and would result in some positive impact.

Reverend Anthony: Certainly. But the vast majority of opinion not only at that synod in 1975 when they heard our report and took the initial actions, but in three subsequent general synods, which means represented electives from across the 30 dioceses of our church, has reiterated and strengthened our policy position. So it is a very small minority opinion within our church, represented by people like Reverend Ivany, that would be opposed officially to the position of our denomination.

Mr. Shymko: So you do not feel that the Ombudsman and visits by people in his capacity would be positive in terms of even the learning experience in communicating the concern they have about the apartheid policy upon their return here and working more effectively, as you certainly have experienced in educational experiences as to what has happened?

Reverend Anthony: The only caveat I personally would be able to see is if the government of Ontario were to express a strong condemnation of the apartheid system, and put some specific functional, practical implications to that expression; and then send the Ombudsman as a representative of those views. Then perhaps--perhaps--some meaningful purpose would be achieved.

If you study the record of the legislation, the current recommendations about security that have just come down from two commissions appointed in the country about tightening security; if you look at the recommendations about tightening controls on the press, there is just no way that two Ombudsmen from Canada, or from anywhere else, are going to make any impact whatsoever on the continuing and escalating repressive legislative and judicial functions in that country.

Mr. Cooke: I doubt they would meet any black leaders in taking a tour of the country in any case. They are going to a conference where they will learn or see very little firsthand.

Mr. Shymko: You have mentioned the visits of members of Parliament and parliamentary delegations to countries in Latin America as was reported by Dr. Foster. Would you have objections to delegations or visits in that capacity to South Africa, or to some of these regimes, which would result in the type of reports that we have before us?

Reverend Anthony: I think our record is quite clear in that regard. The churches have taken an initiative and proposed visits where there was an explicit role of advocacy of defence of human rights and a deliberate attempt to intervene in the situation for just purposes.



Ms. Greene: There is also a difference between a fact-finding mission, or an intervention mission, and one in which one expects to simply go and by one's presence change the political system in that country. One has to be very clear on what one's outcomes are going to be.

Mr. Shymko: The other question I had, I don't know how to explain my perception of it. There is the red-herring reference that is always made by these regimes, such as "There is the threat of the Marxist-Communist totalitarian takeover in South Africa and that is why we have the policies of a 'repressive nature' that we have." You will have the same kinds of statements made by Communist regimes, that any relaxation of the system is a threat posed by the western democratic imperialists who are going to move in.

Do you agree that there is obviously a struggle for human rights, and the defensiveness of those regimes that violate them is basically intertwined with the political power, perhaps the military type of confrontation and competition that exists--including the trade aspect that Dr. Foster has mentioned, the aspect of some profitability in dealing on the one hand with these regimes and, on the other hand, voicing the standard motherhood concerns about human rights violations and yet hypocritically doing the contrary? We have listened to Senator Neiman. I asked her whether there is any special commission in the Inter-Parliamentary Union that deals, for example, with violations in eastern Europe.

They have special commissions and committees on Latin America, on Asia, on South Africa but it is, according to her statement, almost impossible because of the structure of that international body of "parliamentarians" to even imagine a subcommittee or a commission dealing with violations in another part of the world where the regimes are just as repressive, if not in certain aspects, more so. We are faced with the International Labour Organization--and we have had comments that we should certainly try to have an impact there--which to this day had never succeeded in having some resolution about free trade unions in that part of the world.

So there is the frustration that some members in this committee experience as to how can you even succeed when such prominent bodies are so structured, because of the way they were either founded or the way their constitution or bylaws work, that you cannot even make an impact in that part of the world where human rights violations occur.

So, forgive me, I am not trying in any way to hint that there is no interest on your part in eastern Europe. Maybe it is my background, or maybe other things. Six million people died 40 years ago in an artificial famine, almost the whole population of Quebec, for economic reasons of development. Canada was very upset in providing aid because they had dumped the wheat at prices that were competing with our own in 1932 and 1933.

My question is if somehow organizations such as yours could

try to change that structured, almost straightjacket tragedy of these two bodies that cannot provide access to even commissions to study it. When I asked why it is that you have documentation on Latin America and South Africa and nothing on Eastern Europe, it does not mean you were not interested. You would like to see that in terms of the universality of the problem, and I admire the calibre of your research and the effectiveness with which you voice your concerns in somehow assisting very amateurish attempts by these poor communities to voice these concerns. They are not professional, and they need help.

In terms of the Candu reactor sales to Korea and Argentina, I just wonder, would you equate Rumania as being listed as one of the countries because the sale was there? In other words, you want to hear: "Yes Korea, yes Argentina. Why don't I hear Rumania?" type of thing. As to trade sanctions, I support your concern on the--I am sure, Bob, you have raised the issue of who is really a victim of these trade sanctions.

We hear today that the sanctions that supposedly try to help the victim very often victimize the very country imposing the sanctions. I mean there is a debate on it. But I support your view that we should try to apply as much in terms of economic clout to promote these changes and I just wonder whether the Lada car or some of the other highly sophisticated electronic and computer sales that are going on with other regimes could not be added on to the type of concerns and trade sanctions you would want.

I am stating this openly, whatever side I may sit on in the Legislative Assembly. This is where I admire Amnesty International. They make no damned distinction--pardon me for being a little forceful--between these regimes. And I think if we can accomplish that in this committee we are well on our way, I hope, to even the minimal success of helping one individual or two. Having someone like yourself, Reverend, in Moscow with a demonstration of 5,000 people shouting to have you released from 24-hour internment would be a great success. I want to thank you and I just wanted to make the comments I felt I should make and to congratulate you on your presentation and wish you success in your work.

Rev. Anthony: Thank you.

3:50 p.m.

Dr. Foster: I just wanted to respond to one thing, your frustration with international organizations. Despite its limitations, the commission on human rights of the United Nations has addressed situations east and west if you like--Afghanistan, Cambodia, Chile and various other Latin American situations and so on. So I would like to make at least a minor plea on a very unfortunate day for the commission that some of these things can be addressed at least in a limited fashion there. It has not got to the stage for instance that the Madrid discussions seem to have got into this week--almost disintegrating in the attempt to discuss these things.

So at that level I think there is still something that can



be done through the commission, but even there I would refer to some of the reasons for the resignation of the director. There was the lack of funding, the lack of staff, the lack of wherewithal to put behind investigative missions, things like that.

We came down last year to a situation of what we could do about Guatemala. It turns out that what we have done for the last year in Guatemala, where the death rate is 50 a day or whatever, is to ask the Secretary General of the United Nations to make inquiries to the Guatemala government--which is just a ritual sort of thing. Nothing has happened in the past year. It just happens. And in terms of the resources of the commission they could not have appointed a special investigatory mission; they did not have the budget at that point. That little factor came around the edges you know.

There was a little flurry of activity this fall when Canada voted against part of the continuing budget of the human rights commission in the UN, almost by accident. I think the government was very embarrassed about it, but they did it. They voted against it because it was their ritual position more or less not to give any extra. That was most unfortunate. It was a case of abject sleepiness and it hurt the commission. I think I would want to specify that something can be done there--that it means reinforcement.

Finally with regard to the commission I would say there is a tendency in all these things to become ritual. Valerian Zoran shoots off his rockets about Chile and so on and Michael Novak from the United States shoots off his rockets and they pass each other with no effect.

We keep trying to expand the--I want to call it the machinery--the instruments for people contact or for investigations or for reporting or whatever. At the level of the Canadian government we think it is unfortunate that there is not a regular review of these kinds of things. Maybe you guys can do something about that. We, as I say, have tried to engage people in investigatory missions and so on and we have done a great deal of documentation ourselves.

The final thing I wanted to say is in response to what you said right at the beginning regarding trade and other matters--that is the question of armaments. I think you would find within the Canadian churches at this time and within the world church--and I would think in the church east and west--a profound and rapidly growing concern with the lemming-like rush to destruction on both sides. This is on the level of the diversion of productive resources and of what that means if the bulk of our scientific research is really for military purposes.

If that is where the leading edge of our civilisation is at, what does that mean about the future of our society? What are the ideological and human rights effects when the military within any of our societies, east or west, has such a large bulk of the resources as are needed for the rest of us? We see that coming up the hemisphere from Argentina towards Mexico, in the same way you see it coming from Moscow through Poland to West Berlin or

whatever.

Mr. Shymko: The difference, if I may just add, is that we in a free society have more weapons at our disposal to try to change this than you would have in other oppressive societies. Under the Hitler regime, for those who were concerned with the military buildup of Germany, there were fewer chances of having an impact on Hitler under the repressive system they had or the Soviet system with the armament and militarism of either Stalin or today, than in a free society. I have greater faith in putting more pressure here and having success here than unfortunately would be the case on the other side, where we have so little influence and impact.

The Vice-Chairman: We do have two further questions.

Ms. Greene: I want to add something. Two things that I think you have touched on are extremely important, that I think perhaps this committee can do something about.

You raised the question about the eastern European situation and the Soviet situation of dissidents. I think one of the things we have been involved with is the co-operation with the eastern European churches and the Soviet churches in an effort to get freedom of information. That is also a concern here, where there is not adequate freedom of information, where there is not adequate disclosure of activities that take place elsewhere. For instance, companies are engaged in the export of arms. One needs to know where that is going on.

We also need freedom of information that helps us deal with the questions that are partly civil and political liberties for the individual as well. That is a very high priority for us in our co-operation with the eastern European and Soviet churches. The difficulty is that it is not very popular in the press, and so you do not get a lot of coverage of that kind of thing. But that is a priority issue. It is something which we consider ourselves in partnership in seeking.

I think, from our point of view as a task force on corporate responsibility in addressing those kinds of questions, the freedom of information question is fundamental. One does not know what companies are investing there, what particular levers one might have for evaluating the situation for human rights in that region of the world, until you get that basic legislation in place. It is very difficult to get it.

I think the second thing you have raised in your discussion is what I consider to be a false imposition of an east-west conflict in many regions of the world when what it is a legitimate north-south question. The people we were visiting in the German Democratic Republic consider many of their problems in eastern Europe to be actually north-south questions. They have had a lot of difficulties. They are maintaining the kind of society they need, the kind of development they need, to maintain the standard of living of their people because of particular economic relationships they have with the Soviet Union. They understand exactly what we are talking about.



In looking at, say, the southern Africa situation let's not confuse that with a north-south situation, where people are asking for a legitimate redressing of the denial of their economic rights--the right to have a roof over your head, to be able to earn a living and support your kids and that kind of thing. That is exactly what they are talking about. That is my conclusion from discussions we have had and what they say to us, and I would agree with that.

The Vice-Chairman: Mr. Boudria, do you have a question?

Mr. Boudria: I have two questions, Mr. Chairman. I shall be very brief. I know time is getting to be of the essence.

The first question involves the Ombudsman's trip. From the information I have received, the area in which this conference allegedly will be held is known as Stellenbosch. That is apparently a very secluded area where they will likely not see anything else--let us put it this way, they will ensure that they do not see anything else but the mere fact that they are at Stellenbosch. Would you concur with us in that? Do you know what Stellenbosch is?

Reverend Anthony: Yes. Stellenbosch is in the Cape area of the country. It is at the heart of the wine-growing area and is a very fertile and beautiful part of the most beautiful and naturally-endowed country in the world.

Mr. Boudria: Would it be secluded?

Reverend Anthony: It is very secluded from the mass of the black population of South Africa, yes.

Mr. Boudria: One further question, if I may, and this pertains to point number 17 on your South African brief. That has to do with the National Key Point Act of 1980. I was not aware that such a thing existed, and my South African contact was also unaware of it.

Do you mean by this that the company staff of an Ontario corporation that would be manufacturing a certain product in South Africa has in fact compulsory military training, and they may end up in the middle of serious unrest fighting with the South African government against the blacks?

Ms. Pratt: The National Key Point Act is an act that compels the Minister of Defence to declare an industry a key point when he deems that industry to be essential for the fulfilment of military actions, or for the smooth running of the economy in times of stress. A number of companies have been so designated and under the Key Point Act, the minister can compel a company to train its own militia forces in co-operation with the military, and national servicemen can be compelled to serve there in order to perfect the operation. There is no choice.

4 p.m.

Mr. Boudria: Very interesting. Do you know if any Canadian or Ontario companies are involved?

Ms. Pratt: It depends on what you call a Canadian company. Alcan has been declared a key point industry and it has, in fact, had to do the kinds of things we are talking about.

Mr. Bell: So has Ford.

Ms. Pratt: Yes, so has Ford.

Mr. Philip: I have two questions. One is that in deciding an agenda for a committee, particularly on something dealing with human life, one is faced with the very realities of time and how wide or how narrow you focus, or on what issues you focus.

How do we weigh the issue of the size of the atrocity versus the possible success of focusing on certain areas of the world as distinct from others? I think Mr. Shymko has indicated that perhaps focusing on some of the Soviet bloc countries is less likely to make some difference than perhaps focusing on certain Latin American situations. How do you weigh these? Are there countries that can be identified that are more vulnerable to change, and is that where we should focus? Or where do you focus?

Reverend Anthony: That is precisely what we have tried to do, and obviously it is a very complex and difficult task. We come at it, as we said earlier, from the direct contact bases we have largely with church and other organizations on the ground in those countries as the major factor for our action, obviously. Secondly, we come at it from what we regard to be significant Canadian economic or political leverage at the time we are addressing the issue.

For example, when Alcan proposed to make a new investment in South Africa way back in 1974, we went to them ahead of the fact and said: "Do you realize that where you are making the investment is in a so-called homeland area, which the people of the area would claim to be their natural resource base, and which even the bogus legislation in South Africa gives the appearance of at least some allegiance to the people over the area? Do you realize that is a homeland area? What benefit will black people receive directly from that investment? None whatsoever. What kind of skills training will they receive?" and so on.

They went in anyway, and six years later they sold out. Inco similarly went into Guatemala under extremely exploitative conditions--frankly they negotiated with a very weak military dictatorship government--in which Inco was going to make a lot out of natural resources and contribute very little, including tax-free low royalties, or none at all, over a very extended period of time. That was where they fell out finally with the government--even the dictators of Guatemala. The government then wanted to change those conditions, and so on and so forth.

When you look at it in terms of what the internal repression of that government has been on the people of Guatemala, you can



say to Inco, as we have said, "You have provided absolutely no benefit to the people of Guatemala, and you have furthered the repression by giving the impression that this is a progressive, developing nation and that you are contributing to that development." As we said earlier, Inco has abandoned that investment.

When you look more deeply at these complexities you note, as we have in our annual report, which I will leave you, that Canadian banks, not insignificantly, in the last 18 months have participated in loans approaching almost half a billion dollars to the government bank of Chile and other private sector banks. We are just about to release a major study which we have done on the economic model of Chile and its impact on people, in contradiction and contradistinction to the general figures evolved from the World Bank, and the propaganda from the government of Chile, which you can obtain from the embassy here, by the way, to demonstrate that foreign investment, after the coup, has had several effects: to concentrate highly the wealth of Chile; to put many middle, not just small but many middle-range businesses completely out of operation; to have raised the level of the privatization of the economy to a very high degree so that things like education, at the higher level, medical services, the basic infrastructure of social security and unemployment, and so on, have been totally destroyed.

What you have is actually the theft of the wealth of Chile by a few who are supported by the economic elite, and it is that same economic elite and that same economic model that our banks have participated in furthering.

When you have a respected magazine such as Forbes critiquing that model and demonstrating those facts, that as a result of this Chile has the highest per capita national debt of the world and that the economic model is not working, and when you have Noranda withdrawing its massive proposals and Falconbridge going very slowly in terms of a massive half a billion in proposed investments, you begin to see, when you compare those things with what the repression is doing to people within those countries, that there are very important practical questions that must be raised with our Canadian institutions, who are making judgements about where and under what conditions we are prepared to do business. That includes, by the way, tax concessions, export trade concessions and other matters that are legitimately in the interest of this Legislature and of this committee.

I want you, please, to take very seriously the concrete proposals we have made with reference to South Africa, and, for Mr. MacQuarrie's benefit--we do not have time to get at some of the questions he was raising earlier, but I want to point out that the Seagram corporation, which is not an insignificant multinational corporation in this country, proposed to invest in the wine and liquor industry of South Africa some five years ago, consulted both the United States churches and the Canadian churches about that proposal, as well as a number of other organizations, and decided not to proceed with a \$10 million proposed investment.

The US-sponsored Rockefeller Foundation and Ford Foundation related study, which we are tabling in brief with you today, has just concluded there should be no further investment by US corporations in South Africa. I would propose that if you do not take that kind of evidence seriously, and if you do not take strict and explicit measures to inhibit that kind of furtherance of benefit to the economic interests of South Africa, which are for the benefit, massively, of the whites, then we will feel that you have not seriously addressed the kinds of concerns we believe the churches in this province and in other provinces have been raising as very appropriate and timely and things that can achieve a positive result, and are not simply rhetorical stances or stances which we, out of a particular bias, have chosen to address.

The Vice-Chairman: I hate to cut this off, but we have to finish up by 4:30 this afternoon. If you want to make any recommendations to the Legislature, and to have any benefit from the Legislature--this is a first in any province in Canada, if this is accepted, so we really appreciate--

Mr. Philip: May I ask one last question that they can answer yes or no to?

The Vice-Chairman: Okay, if it can be a yes or no. You recognize that 4:30 is the deadline.

Mr. Shymko: How long is your question?

Mr. Philip: Shorter than yours, Yuri, I guarantee it. About a third of yours, which means I have 10 minutes left. Would it be a legitimate role for this committee to look at the secondary educational system with a view to coming up with recommendations for a program on human rights to be developed in the Ontario high school system? I notice there is some of that in the separate school system, partly because, in my area, of the influence of the Scarborough Foreign Mission Society, and that kind of thing, but I find no evidence of it in the public school system, and I am wondering whether that would be a legitimate task for this committee in your opinion.

Reverend Anthony: I believe, absolutely, that the Canadian Council of Churches, the Canadian Conference of Catholic Bishops and the two coalitions represented here would want very much to encourage that kind of program.

4:10 p.m.

Dr. Foster: Yes, the United Nations, through UNESCO, has sponsored a number of events in North America, as well as elsewhere, on human rights education to attempt to facilitate educators and educational planners in developing the needs, and--

Mr. Philip: So you could work with the committee on that to find a solution--

The Vice-Chairman: Thanks very much. We really appreciate the information and support you have given us. We would like to wish you all well in your future endeavours on behalf of



what you are trying to promote. I think Yuri summed it up quite well on behalf of the members of the committee. We appreciate it.

Reverend Anthony: Thank you, Mr. Chairman. We would be happy to provide you with further references, including some of the topics not submitted here today, through our church constituencies, and if you wish more information or further presentations from other groups we would be happy to try to facilitate those.

The Vice-Chairman: We will take one step at a time. We have to find out if we are going to be able to be useful, and that is what we are trying to arrive at today. Thank you.

Mr. Mitchell: Mr. Chairman, I could not help but twig on the comment you just made when you called a halt to the discussion with the church task force. I think I have indicated through the three days of this committee's deliberations that I have, I think truthfully, entered the deliberations and the debates with a somewhat negative view. I think that is quite fair to say.

You mentioned in your last few comments that we did have to adjourn today, and as a result we had to take some position in this committee to report to the Legislature. I suggest to you that if I as a new member or the rest of us who are new members are to make a worthwhile contribution to this committee I must tell you honestly I don't feel I could do it at this time.

We have an inordinate amount of information here which we have dealt with as the people have presented it to us; the clerk has certainly given us more than a sufficient summary of previous sittings. But since we have indicated that we are going to sit with the Ombudsman before the House comes into session I suggest to you, on the basis of Mr. Philip's comments, that we could probably resolve the discussions with the Ombudsman in half a day, and on the basis of that I would move that we not attempt to strike the position of this committee in 15 minutes but rather that we refer or delay that until we have our discussions with the Ombudsman. By that time I will have had a chance to go through this and will, I hope, be more secure in my own mind about just what I am prepared to support and what I am not prepared to support. I want to be, as we said this morning--

Interjection.

The Vice-Chairman: Mr. Mitchell, I'm sorry. I don't think I have tried to rush this thing. But in the opening remarks I think a statement was made which came from that side which indicated that we didn't want to waste our time and wanted to make progress so we could wrap things up. We just left it open so we had the prerogative before 4:30 that, if we decide we need further time, so be it. I'm not trying to influence this. I want to give the opportunity.

Mr. Mitchell: That happens to be my position. I do not intend to speak for the committee. If I were asked at this moment to make a decision I am afraid it might be one that would not truly reflect what my position could be after being able to read that material.

The Vice-Chairman: Mr. Shymko, would you like to make a comment?

Mr. Shymko: Mr. Chairman, since I had suggested that we perhaps conclude our meeting today with some form of general resolution to the effect that at least this committee rather than another committee should be charged with the mandate of monitoring and working with members of the Legislature and with public groups in the area of violation of human rights.

Mr. Mitchell may feel that this may require another week, or two or three weeks, until the next meeting, or until we meet with the Ombudsman on the whole question of his participation at the conference in South Africa. That particular meeting and the deliberations related to that specific topic will have a major impact, or some influence, on the decision of expanding the mandate of this committee and the framework of the operation.

I was not planning to rush, or to make any rash decisions, and I just would hope, Bob, that you at least would feel the way I do; that a motion such as this should be forthcoming and that the general gist of what I was saying would be acceptable to you and to the majority, if not all the members, of this committee. I am not being adamant in trying to reach a decision, or to vote on a motion today, as long as there is at least a general feeling of harmony as to the intent of my suggestion when it comes before this committee whenever it meets.

Mr. Bell: Mr. Chairman, I think that is the consensus. The committee might want to consider expanding its one motion this morning. I think you are going to need more than the time permitted in that day you sit to listen to the Ombudsman. Bear in mind, you have something to do after you speak to the Ombudsman. You are going to have to decide what, if anything, you are going to do on that. That has got to be your priority in terms of a report, because whatever decision you come to on that issue, you owe it to all concerned to have that report the very next day, to have your conclusion tabled in the Legislature, for a lot of reasons. So I can see a good part of the afternoon of that day taken with that.

I think Mr. Mitchell's comment is well taken. It is a very important subject and there is a lot to digest. It is probably a lot to ask five new members to join perhaps in detail of something with the "longer standing members."

Mr. Philip: I can see us tabling a report in the Legislature two or three days after the House sits, but it would be a two-part report--one stating that we had made some progress and had agreed to perhaps something, such as what Yuri has suggested, and stating that we would wish to meet and develop that further; and the second dealing with the matter of the Ombudsman. I do not know whether having the two in the one report would distract one from the other, or whether we simply deal, when next we meet, with the Ombudsman's proposed trip and simply accept in principle now the general thrust which Yuri was trying to put before us, and just carry on and do more on that before we report back on that. But those are the two options.



Mr. Shymko: My fear, Mr. Chairman, is that there were 14 submissions, pieces of correspondence, respecting the Ombudsman's proposed trip to South Africa. Once we announce that there is a specific day when we will meet to discuss this issue, there may be requests by some of the individuals who submitted their concerns to appear before this committee, and before we know it this will not be a half-day session, but probably would go on for an entire day. So, in planning the next meeting, I would urge the chairman to keep this in mind.

We do not know if there are letters addressed to the chairman from these individuals indicating they would like to appear. Are we ready to allow for such witnesses, or do we just limit it exclusively to the correspondence? Would this be an in-camera meeting? Should we perhaps not consider an extra day possibly, if required, so that we are not faced with making another decision that would be in conflict with the House recommendation as to one-day or two-day sittings?

I just would not want to be caught with another 15 minutes left to decide on the motion and the implications of the motion, and the details as to how this committee would operate, because that is a discussion which is quite serious and would take certainly more than just 15 minutes. I'm sure it would take at least half a day.

4:20 p.m.

Mr. Mitchell: I will go back to the comments I made the first day, and I reiterated them this morning. To me it appeared obvious that we were going to need additional time. Being unaware of what rules applied to this committee, I was so bold as to suggest we should seek approval from the House leaders to continue our deliberations. I suppose the Ombudsman question is one of instant response, in that it is something facing a time in a sense. I feel I am facing a time, however, in trying to respond to a motion that was accepted by the House as put forward by Mr. Renwick.

I have moved that we deal with this at the time we come back. We should leave it then at that point with the chairman, recognizing the concerns that appear to be prevalent at this table. If he can arrange additional time to answer Yuri's concern that we are not facing again 15 minutes there, I am quite prepared to live with that. But at this time, Mr. Chairman, if you were to ask me to take part in preparing a recommendation, I tell you quite honestly, I could not.

The Vice-Chairman: I guess it would be a matter of getting the time set aside. Maybe the first thing we should decide is when we are going to meet. Are we going to meet the Wednesday after the opening? Has that been clarified?

Mr. Mitchell: No. The motion this morning left it to the chairman to discuss it with the House leaders. If you relay to the chairman of the committee that we have indicated we want additional time to prepare our report based on the motion, and as long as that consensus is accepted here, we can leave knowing that the chairman will resolve the time problem to allow us to deal with those things.

Mr. Philip: I accept that as a general amendment. But the original motion, as I recall, said we would ask for extra time as soon as possible after the House reconvened to deal with the matter of the Ombudsman's trip to South Africa. I am quite prepared to extend that, and I think we need to. But the major agenda that will be before us when we next sit will be the South African trip. Then we can go on to the other matter.

Mr. Mitchell: That is precisely what I am saying. I would not want to put a motion forward here today and say, because of a variety of reasons, I am unable to debate or to arrive at a decision with regard to Mr. Renwick's motion. I would find that very difficult.

Mr. Bell: Mr. Mitchell, the matter in principle you have already voted upon. Mr. Runciman is going to go to the House leaders to get more time. Once you get more time--in principle you are the author of the extent of that time--then your concern will look after itself. You have two matters to address; so I don't see a problem.

I think everybody in this room, Yuri, recognizes that this is not something that should and can be done in 15 minutes. I think half a day is the absolute minimum.

Mr. Shymko: There is also the question of discussing a possible trip to the north.

Mr. Bell: There are a few other things, sure. There is counsel's dinner and everything.

Mr. MacQuarrie: Mr. Chairman, in view of the fact that our next meeting will be with the Ombudsman presumably, and taking into account the nature of his office, I trust that the meeting with him would be an in camera session.

Mr. Shymko: I tend to agree with the suggestion. Because of the delicate nature of the discussions, I think it would be more positive to any resolution that we may come up with in camera than to open it to the public.

Mr. Mitchell: If that is a motion, then I support it.

The Vice-Chairman: Is that a motion? Are we agreed on the motion that we meet in camera on the next meeting with the Ombudsman? Or is that not the motion?

Mr. Piché: With the Ombudsman in camera?

Mr. MacQuarrie: My motion essentially was that the next meeting with the Ombudsman be in camera.

Mr. Philip: I certainly would not agree with that.

Mr. Piché: Neither would I.

Mr. Philip: There is a major expenditure of Ontario taxpayers' funds on this. There is major concern by a number of groups out there.



Mr. MacQuarrie: According to the Ombudsman's letter, "No costs in connection with my attendance are to be borne by the Ontario taxpayer." I make the suggestion, Mr. Chairman, that we have an Ombudsman, and because of the the nature of the office, the nature of the duties imposed on him by statute, the general connection of the Ombudsman with the assembly, I think in fairness to the office, if not to the individual occupying the office, that the discussion concerning his proposed trip to South Africa should be held between him and the committee.

Mr. Bell: May I speak to something? If that is to be discussed, in fairness it might be appropriate to ask the Ombudsman what he would like to do, because it has been discussed publicly in the past.

Secondly, I can give you the benefit of some experience with select committees who have gone in camera for matters relating to their business other than writing reports. Whenever it has happened, both the committee and those involved in that proceeding have been severely criticized.

Mr. Piché: As they should be.

Mr. Bell: It is not worth it. I can go all the way back to 1973, when the select committee on the Hydro head office building decided to go in camera for a day and a half to hear about the so-called financial considerations of two companies involved in the project. The criticism was overwhelming, severe and the committee regretted it. I can give you examples of this committee deliberating whether it was going to go in camera on a matter and it decided against it because even the very raising of the question promoted a lot of discussion and criticism.

Mr. MacQuarrie: Mr. Chairman, I raised this as a possibility, and I was thinking more of the office than of the potential controversy that this could arouse; so the suggestion of discussing it with the Ombudsman is a good one.

The Vice-Chairman: We could leave that as a motion that is on the floor. We could leave it as it is now 4:30 p.m. and we could deal with it--

Mr. MacQuarrie: I will withdraw it, Mr. Chairman.

Mr. Piché: The motion is withdrawn and you have brought the clock to our attention.

Mr. MacQuarrie: That is right. If the chairman would raise it with the Ombudsman.

Mr. Bell: We will raise it with Bob too. It is a matter for discussion, but if we are off the record now--

The committee adjourned at 4:28 p.m.







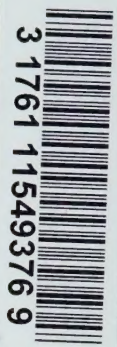






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